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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Summary

In the present report, the Special Rapporteur on the independence of judges and lawyers examines the protection of children's rights in the justice system and analyses the essential role that must be played by judges, prosecutors and lawyers in upholding children's human rights and applying international human rights norms, standards and principles at the domestic level. The Special Rapporteur endeavoured to go beyond the more limited notion of juvenile justice, so as to reflect the diverse experiences of children when they encounter the justice system as victims or witnesses, because they are in conflict with the law, or as parties to judicial proceedings.

Following a brief outline of the activities carried out by the Special Rapporteur in 2014-2015, the thematic section of the report consists of five parts. The first sets the legal framework and fundamental principles upon which the Special Rapporteur's analysis of the requirements for a child-sensitive administration of justice is based. The second part discusses access to justice and legal aid from the perspective of children. The safeguards necessary to respect, protect and fulfil children's rights at the different stages of judicial proceedings, including sentencing, are addressed in the third part. The fourth part touches on the importance of providing children with alternatives to judicial proceedings. In the last part, the Special Rapporteur draws attention to the essential need for quality and specialized education, training and capacity-building for judges, prosecutors and lawyers. Sections IV and V contain conclusions and a number of recommendations.

The Special Rapporteur concludes that investing in child-sensitive justice is indispensable to strengthening the rule of law and the enjoyment of human rights by all, as well as to building flourishing democratic societies. In all the aspects of the justice system, children have special rights, needs and interests that must be given primary consideration.

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I. Introduction

1. The present report is the last submitted for the consideration of the Human Rights Council, in accordance with its resolution 26/7, by the current Special Rapporteur, Gabriela Knaul.

2. The Special Rapporteur decided to focus her report on the fundamental role that must be played by judges, prosecutors and lawyers in protecting children's rights. Despite the quasi-universal ratification of the Convention on the Rights of the Child, children still count among the most vulnerable to human rights violations and other types of abuse. For this reason, the importance of child-sensitive justice—justice that respects, protects and fulfils the rights of children—cannot be overemphasized. An administration of justice that fails children ultimately also fails society. The Special Rapporteur is convinced that investing in child-sensitive justice is indispensable to strengthening the rule of law and the enjoyment of human rights by all, as well as to building flourishing democratic societies.

3. After summarizing, in section II of the report, the activities she carried out in 2014 and 2015, including country visits undertaken, communications sent and events attended, she introduces the international legal framework and fundamental principles that form the basis of her analysis of the requirements for a child-sensitive administration of justice (section III, part A). In section III, part B, she discusses access to justice and legal aid from the perspective of children. In part C, she addresses the role of judges, prosecutors and lawyers in relation to the basic requirements necessary to respect, protect and fulfil children's rights at the different stages of judicial proceedings, including sentencing. In part D, she touches on the importance of providing alternatives to these judicial proceedings. Before concluding and presenting her recommendations in sections IV and V, she draws attention to the cross-cutting need for quality and specialized education, training and capacity-building for judges, prosecutors and lawyers.

4. Judges, prosecutors and lawyers have an essential part to play in upholding children's human rights and applying international human rights norms, standards and principles—in particular those specific to children—at the domestic level and in compliance with the State's international human rights obligations. In accordance with the Convention on the Rights of the Child and for the purpose of this report, the terms "child" or "children" refer to every human being, male and female, under the age of 18 years. Further, the terms "child-friendly" and "child-sensitive" are used interchangeably and understood as "that takes into account children's specific needs, views and rights".

II. Activities in 2014 and 2015

A. Country visits and communications with member States

5. The Special Rapporteur carried out official visits to Qatar, from 19 to 26 January 2014 (A/HRC/29/26/Add.1), the United Arab Emirates, from 28 January to 5 February 2014 (A/HRC/29/26/Add.2), Tunisia, from 27 November to 5 December 2014 (A/HRC/29/26/Add.3) and Portugal, from 27 January to 3 February 2015 (A/HRC/29/26/Add.4), at the invitation of the respective Governments.

6. The Special Rapporteur wishes to thank the Governments of France, Germany, Greece, Iraq, Kenya, Morocco, Nepal, Spain and the United States of America for inviting her to conduct official visits in their respective countries. She regrets that she was unable to undertake the visits before the end of her mandate and encourages these Governments to continue engaging with her successor.

7. Between 1 March 2014 and 28 February 2015 inclusive, she sent a total of 117 communications alleging violations of human rights in the context of her mandate to 54 Member States. Of these communications, 86 were urgent appeals and the remaining 31 were letters of allegation. Details of the communications and responses from Governments are included in the communications reports of special procedures (A/HRC/27/72, A/HRC/28/85 and A/HRC/29/50).

B. Other activities

8. From 27 April to 1 May 2014, the Special Rapporteur attended the sixty-third session of the General Assembly of the Latin American Federation of Judges and the annual meeting of the Ibero-American Group of the International Association of Judges in Santo Domingo, Dominican Republic, where she delivered a statement on the current challenges to the independence of the judiciary and the importance of promoting capacity-building activities in international human rights law for judges.

9. On 8 and 9 May 2014, she participated in an international symposium on justice and the rule of law organized by the YükselKarkınKüçük Attorney Partnership in Istanbul, Turkey, at which she delivered a speech on the various forms of interference, pressures and attacks against the judiciary.

10. On 11 June 2014, she participated as a panellist in a side event of the Human Rights Council session entitled "Strengthening the rule of law in Venezuela", organized by the International Commission of Jurists and the International Bar Association's Human Rights Institute.

11. On 13 June 2014, the Special Rapporteur presented her annual thematic report to the Human Rights Council, which addressed judicial accountability (A/HRC/26/32) and the report on her official visit to the Russian Federation (A/HRC/26/32/Add.1).

12. On 18 June 2014, she participated in an event entitled "Independence of the judiciary: international standards and practice", organized by the Mission to Serbia of the Organization for Security and Cooperation in Europe in Belgrade.

13. On 15 July 2014, she attended a press conference on recent judicial law reforms in Cambodia, organized by the International Bar Association's Human Rights Institute in Phnom Penh.

14. On 23 October 2014, she presented her annual thematic report to the Third Committee of the General Assembly. The report highlighted the need to promote justice and the rule of law in the post-2015 development agenda and called for explicit references to access to and the administration of justice in the post-2015 sustainable development goals and targets.

15. From 29 October to 2 November 2014, she participated in the 58th Congress of the International Association of Lawyers, in Florence, Italy.

16. On 24 November 2014, she took part in an expert consultation entitled "Human rights considerations relating to the administration of justice through military tribunals and role of the integral judicial system in combating human rights violations". At the consultation, which was organized by the Office of the United Nations High Commissioner for Human Rights, pursuant to Human Rights Council resolution 25/4, the Special Rapporteur presented the findings of her 2013 report to the General Assembly on the administration of justice through military tribunals (A/68/285).

17. On 12 December 2014, she was the keynote speaker at the International Human Rights Day Lecture, which was organized in Harare by the Zimbabwe Human Rights NGO Forum and Zimbabwe Lawyers for Human Rights.

III. Protecting children's rights in the justice system

A. International legal framework and fundamental principles

18. A number of international human rights treaties and instruments address issues related to access to justice and to an effective remedy, the treatment and rights of persons before the courts and in judicial and administrative proceedings, and the independence of the judicial system and the legal profession. Some of these instruments are applicable to all without distinction, including on the basis of age. A number of them provide child-specific guarantees and protection. Other instruments are exclusively dedicated to children.

19. The instruments referred to throughout the present report, and which form the basis of the Special Rapporteur's analysis, are mentioned below. They do not represent an exhaustive list. Special attention is given to the provisions of the Convention on the Rights of the Child and the fundamental principles it contains. The rights and principles contained in the Convention should always be taken into account by judges, prosecutors and lawyers alike when performing any of their professional functions where children are concerned.

20. Article 14 of the International Covenant on Civil and Political Rights establishes that "all persons shall be equal before the courts and tribunals" and that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Article 14 also details a series of due-process guarantees for persons charged with a criminal offence and, in this context, it explicitly stipulates that "in the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation". In its general comment No. 32, the Human Rights Committee recognized that "juveniles need special protection" and recommended that States take measures "to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age".[1]

21. Other relevant international human rights instruments include the following: Basic Principles on the Independence of the Judiciary (1985); United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985) (the Beijing Rules); Basic Principles on the Role of Lawyers (1990); Guidelines on the Role of Prosecutors (1990); United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) (the Havana Rules); Guidelines for Action on Children in the Criminal Justice System (1997); Bangalore Principles of Judicial Conduct (2002); Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002); Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (2010) (the Bangkok Rules); and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012).

Convention on the Rights of the Child and its four fundamental principles

22. The Convention on the Rights of the Child enshrines a series of guarantees relevant to the specific protection due to children who come into contact with the justice system. Of particular relevance to the present report is article 40 of the Convention, which recognizes the "right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth" and that takes into account "the child's age". Article 40 lists a series of due-process guarantees, some of which provide for additional protection due to children. In addition, article 12 states that children shall be provided "the opportunity to be heard in any

[1] General comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, paras. 42 and 43.

judicial and administrative proceedings affecting" them. Finally, article 3 underlines that "the best interests of the child shall be a primary consideration" in all actions concerning children, including when undertaken by courts of law. As far as it grants broader protection to children, the Special Rapporteur considers that the Convention on the Rights of the Child should be considered and applied as *lex specialis*.

23. The Committee on the Rights of the Child has identified four general principles enshrined in the Convention[2] which must be taken into account for interpreting and implementing all the rights of the child, in particular when judges, prosecutors and lawyers are considering matters affecting children. They are the rights to non-discrimination, the right to life and development, the right to be heard and the primary consideration of the child's best interests. In its general comment No. 10 on children's rights in juvenile justice, the Committee explained that these, together with the notion of dignity, are leading principles essential to a comprehensive policy on juvenile justice.

24. The principle of non-discrimination is especially relevant when justice systems are dealing with particularly vulnerable groups of children, such as street children, children belonging to minorities, migrant children or asylum seekers, children with disabilities, or child soldiers, who may require particular attention, protection and skills from the professionals interacting with them, especially lawyers, prosecutors and judges.

25. The best interests of the child should be a primary consideration in all decisions taken within the context of the administration of justice for children. Concretely, this means that those with decision-making power in the justice system—in particular lawyers, prosecutors and judges—must be aware of this obligation and comply with it by evaluating what the best interests of the child are in each individual case presented to them. As pointed out by the Committee, "the protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders".[3]

26. The child's right to life and development is particularly pertinent when judges are considering sentences in criminal cases involving children. Indeed, deprivation of liberty "has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society".[4] For this reason, the Convention dictates that it should be used only as a measure of last resort. Other types of sanctions can also seriously affect children's development and, for this reason, in these cases too, prosecutors and judges should bear in mind the necessity to respect the development of the child.

27. Finally, the Committee explained that "the right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of juvenile justice".[5] Lawyers have an essential part to play in facilitating children's right to be heard, provided they have the required skills to listen to children's views and represent them appropriately. The justice system itself nevertheless needs to be designed in such a way as to provide adequate opportunities for children to be heard and express their views. Judges also should be sensitized to this fundamental principle, as they are often on the receiving end of information provided during judicial proceedings and make their decisions based on this information.

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[2] See general comments No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child, para. 12; No. 12 (2009) on the right of the child to be heard, para. 2; and No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 1.

[3] General comment No. 10 (2007) on children's rights in juvenile justice, para. 10.

[4] Ibid., para. 11.

[5] Ibid., para. 12.

B. Children's access to justice and legal aid

1. Access to justice for children

28. As defined by the United Nations Development Programme (UNDP), access to justice is the ability of people to seek and obtain remedy through formal or informal institutions of justice, and in conformity with human rights standards.[6] Access to justice constitutes both a fundamental human right in itself and the means of enforcing or restoring the exercise of rights that have been disregarded or violated (A/69/294, para. 50 and A/HRC/8/4, para. 17).

29. As previously underlined by the Special Rapporteur, the lack of access to justice has serious consequences for the full enjoyment of human rights. In turn, fair and effective justice systems, able to provide people with effective redress and adequate remedies, constitute the most efficient way to ensure a sense of safety, stability and prosperity, by reducing the risks associated with violence and abuses of rights and by deterring perpetrators from committing further violations (A/69/294, para. 52).

30. As children are particularly vulnerable to violations of their rights and to abuses of all sorts, their access to justice should be facilitated and reinforced. In reality, while many obstacles impede both adults' and children's access to justice, children are often disproportionately affected. They also face specific barriers owing to their status as minors.

31. Various factors and circumstances impede appropriate and equal access to justice for children; they can be clustered in six categories. First, children can face physical barriers, which include geographical distance from courts or other relevant institutions or lack of adequate facilities at those institutions' premises. Second, psychological factors can also play an important role in undermining children's access to justice. Children may be unable or reluctant to seek justice because they are too young or too traumatized to articulate what happened to them; or they are afraid of, dependent on or love the alleged perpetrator(s); or they do not perceive what happened to them as a violation of their rights. Third, children also face social and/or cultural barriers when trying to access justice; these can be related to their difficulties to communicate, fear of social stigma associated with the formal justice system, dependency on adults, or mistrust of the justice system.

32. Fourth, barriers relating to information also seriously hamper access to justice for children. Information on fundamental rights, available remedies and procedures to follow to claim their rights is not always available and, when available, often difficult to understand, even for adults. Fifth, while children lack financial autonomy and means, court proceedings often represent a heavy financial burden, as can the costs of initiating and pursuing proceedings, including lawyers' fees. Lastly, children encounter legal obstacles on their path to justice, such as lack of legal capacity or standing, lack of legal identity (especially relevant for children who are unregistered migrants, refugees or asylum seekers, or street children), or dependence on parents or a legal guardian. Dependence on adults often compounds the other obstacles for children trying to access justice.

33. Guaranteeing children the right to equal access to justice means making special provisions for them and offering them differentiated protection. As stated by the Committee on the Rights of the Child:

> "children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective child-sensitive procedures available to children and their representatives. These should include the provision of child-

[6] UNDP, *Programming for Justice: Access for All — A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (2005), p. 5.

friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance".[7]

34. The Special Rapporteur wishes to point out that, while this report focuses mainly on issues related to the formal justice system, in its broadest sense, the concept of access to justice involves not only access to the judicial system, but also access to other procedures, mechanisms and institutions able to assist individuals to claim their rights, including national human rights institutions, ombudsmen or mediation institutions (A/69/294, para. 53 and A/62/207, para. 38). Concerns and recommendations formulated with regard to the administration of the formal justice system are often relevant, mutatis mutandis, when it comes to these other avenues for redress and remedy.

2. Child-friendly legal aid

35. The right to access justice is inextricably connected to the right to legal assistance. As highlighted in previous reports, the purpose of legal aid is "to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people who would otherwise be unable to afford legal representation and access to the court system" (A/HRC/23/43, para. 27). Accordingly, the Special Rapporteur has advocated for a definition of legal aid that is as broad as possible, including "not only the right to free legal assistance in criminal proceedings, as defined in article 14 (3) (d) of the International Covenant on Civil and Political Rights, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations"(ibid). A broad definition and application of legal aid is all the more important when dealing with children and children's rights.

36. As already noted by the Special Rapporteur, legal systems can be immensely confusing and difficult, if not impossible, to navigate for children, especially without the help of a legal professional. "Legal assistance provides children with the means to understand legal proceedings, to defend their rights and to make their voices heard" (A/HRC/23/43, para. 84). The right of children to have access to legal assistance is recognized in a number of international instruments, including the Convention on the Rights of the Child (in particular, in articles 12 and 40), and the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

37. In its general comment No. 10, the Committee on the Rights of the Child further explained that, when preparing his/her defence, a child in conflict with the law must be guaranteed free and appropriate legal and other appropriate assistance.[8] Indeed, by virtue of their age, dependent status and economic circumstances most children are unable to pay for legal aid. The Special Rapporteur considers that given this reality, "children must have access to free legal assistance in criminal and in civil proceedings and administrative fees must be waived".[9]

38. As noted in a 2011 study, "the provision of timely, competent, and developmentally appropriate legal assistance directly advances a child's right to a fair, just, and participatory legal process. Child-friendly legal aid also has the potential to promote children's substantive rights".[10] In this respect, lawyers have a professional responsibility towards children and should therefore acquire the special skills to be able to take into account the unique attributes and needs of child clients and effectively deliver child-friendly legal aid.

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[7] General comment No. 5 (2003), para. 24.

[8] General comment No. 10 (2007), para. 49.

[9] UNDP, United Nations Children's Fund (UNICEF) and United Nations Office on Drugs and Crime (UNODC), *Child-Friendly Legal Aid in Africa* (2011), p. 11.

[10] Ibid, p. 24.

39. The Special Rapporteur believes it is essential that States adopt special measures to ensure children's meaningful access to legal aid that address their special needs and take into account their best interests.[11] Such measures should prioritize legal aid for children and should render legal aid "accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children".[12]

40. For this purpose, lawyers' codes of conduct should provide specific guidance regarding the representation of children (including concerning the nature of the relationship between the lawyer and child and the possible conflict between the duty of representation and the duty to act in the child's best interest). Lawyers must be aware that they represent exclusively the interests of the child and not the interests of other persons, such as parents, institutions or bodies. They should be trained in children's law and in child and adolescent development and able to communicate effectively with children and their legal guardians.

41. As noted in a previous report, where there is a shortage of qualified lawyers, "the provision of legal aid services may also include non-lawyers or paralegals" (A/HRC/23/43, para. 56). According to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the role played by paralegals in providing legal aid services where access to lawyers is limited should be recognized by the State.

42. Paralegals can complement the work of lawyers or work independently providing legal assistance that does not need to be provided by a lawyer. They could be paid professionals, but in many societies they are volunteers. Paralegals can often provide an essential link to the communities and groups they serve, as they often come from these very communities and they often know first-hand the language, the culture and the conditions in which the communities live and function, and the particular legal challenges they are facing. Using paralegals to deliver legal services and supplement the work of lawyers can prove extremely cost-effective.

43. Paralegals are often in a better position than lawyers to provide legal services tailored to the needs of specific communities and groups. In many countries, lawyers can be unaware of those specific needs, or even worse they may be uninterested in dealing with the specific communities. In a large number of countries, qualified lawyers are simply lacking. Under all these circumstances and more, paralegals can play an important role in bridging the gaps between the communities and the judicial system, thereby contributing to increased access to justice.

44. The Special Rapporteur wishes to underline that when use is made of paralegals, national legislation should ensure that minimum quality standards for their services are met and that the types of legal services they may provide are specified. For this purpose paralegals must be given appropriate training opportunities and, in some cases, operate under the supervision of a qualified lawyer (A/HRC/23/43, para. 56). In particular, paralegals "must have sufficient knowledge and understanding of the various legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law".[13]

3. Informal justice systems

45. In many parts of the world, informal justice systems "form a key part of individuals' and communities' experience of justice and the rule of law, with over 80

[11] The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems include a list of special measures for the provision of legal aid to children, paras. 53–59.

[12] Ibid, para. 35.

[13] General comment No. 10 (2007), para. 49.

percent of disputes resolved through informal justice mechanisms in some countries".[14] Informal justice systems encompass many mechanisms of differing degrees and forms of formality, whether or not their role is officially recognized by the State. These informal mechanisms, whose role often includes the resolution of disputes and the regulation of conduct by adjudication or assistance to a third party, include tribal, culture and religion-based courts and often exist side by side with the formal justice system.

46. In many contexts, such informal justice systems "deal with issues that have a direct bearing on the best interests of women and children, such as issues of customary marriage, custody, dissolution of marriage, inheritance and property rights".[15] Yet, little research seems to have been done on the issues arising when children enter into contact with informal justice systems.[16]

47. People reach out to informal justice systems rather than the formal one for diverse reasons. Informal justice systems are often more accessible, comprehensible, familiar and affordable, and less formal. Informal justice systems are also often seen as providing for potentially quicker and less expensive remedies, which are perceived as more in accordance with specific cultural, religious or other traditional values and beliefs. Contrary to formal justice systems, informal justice systems' outcomes are also often perceived as emphasizing reconciliation, restoration, compensation and reintegration rather than custodial sanctions.

48. Informal justice systems nevertheless present extremely worrying aspects, in particular when it comes to the treatment of children. In reality, many informal justice systems reinforce existing societal or structural discrimination and power relations, in particular to the detriment of children, women and various minorities. In particular, in many societies, traditional values attribute little or no importance to the opinions and wishes of children, and, as a result, many informal justice systems ignore the rights of children, especially the rights to be heard in matters that affect them and to have their best interests protected.

49. It is important to recall that "such courts cannot hand down binding judgements recognized by the State unless the proceedings are limited to minor matters, they meet the basic requirements of fair trial and other procedural guarantees, and their judgements are validated by State courts and can be challenged by the parties concerned in a procedure meeting the requirements of article 14 of the Covenant" (A/HRC/8/4, para. 38).[17] Judgements that do not conform to international human rights standards are simply not acceptable. It is essential to ensure that international human rights norms and standards concerning children are known and applied by informal justice systems, as the obligation to respect, protect and fulfil human rights extends to them as well.

C. Child-sensitive adjudication

50. Notwithstanding the abundance of international treaties, rules, guidelines and principles that exist to protect children's rights, the Special Rapporteur notes that the treatment of children in judicial proceedings, both civil and criminal, is generally unsatisfactory. Justice systems are too often not adapted to integrate adequate consideration of children's rights. Judges and prosecutors often do not take children's cases, views or best interests seriously, and children's lawyers are often unequipped to represent them in a proper manner. It is unacceptable that children who come into contact with the justice system are often victimized or re-victimized.

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[14] UNDP, UNICEF and UN-Women, *Informal Justice Systems – Charting a Course for Human Rights-based Engagement*, p. 5.

[15] Ibid.

[16] Ibid., p. 12.

[17] See also Human Rights Committee general comment No. 32 (2007).

51. Against this backdrop, the importance of designing, developing and strengthening justice systems that are sensitive to children's needs, rights, well-being and best interests cannot be overemphasized. A child-friendly or child-sensitive justice system must guarantee the effective implementation of all children's rights, while giving due consideration to the child's level of maturity and understanding. In particular, child-sensitive justice must be "accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity".[18]

52. In consonance with the Committee on the Rights of the Child, the Special Rapporteur is of the opinion that the scope of child-sensitive justice should extend to "all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes, health care, social security, unaccompanied children, asylum-seeking and refugee children, and victims of armed conflict and other emergencies".[19]

53. As the Special Rapporteur has recalled on countless occasions, judges, prosecutors and lawyers are in a privileged position and have a particular responsibility to ensure the protection and promotion of both human rights and the rule of law. In particular, judges have a proactive duty to ensure that they uphold international human rights law and standards at all stages of court proceedings. To be able to make appropriate decisions on matters concerning children and uphold their rights, judges, lawyers and prosecutors must have received specialized training.

1. Children in conflict with the law

54. While the State is entitled to seek justice from children alleged to or accused of having infringed the penal law, it still has obligations with regard to ensuring that their treatment in the justice system is fair. The Special Rapporteur deplores that too often justice systems, and in particular criminal justice systems, are designed for adults and have not integrated the specific procedural safeguards due to children.

55. At a very minimum, every child alleged as or accused of having infringed the penal law shall be granted the guarantees enumerated in article 40, paragraph 2 (a) and (b), of the Convention on the Rights of the Child. While some of these guarantees are generally established in international human rights law, in particular in article 14 of the International Covenant on Civil and Political Rights, other guarantees are granted to children because of their specific status as minors.

56. For instance, the Convention on the Rights of the Child provides that a child has the right to be informed of the charges against him or her including "through his or her parents or legal guardians" and the right to legal "or other appropriate" assistance. It also provides that children must also be tried "without delay", while the International Covenant on Civil and Political Rights requires that they be tried "without undue delay". This means that the swiftness of the proceedings is especially important and implies that children have particularly prompt access to legal counsel. Parents or guardians of a child are normally entitled to participate in the proceedings but, depending on the best interests of the child, they may either be required to attend hearings or be excluded from participation.[20]

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[18] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, section II (c).

[19] General comment No. 12, para. 32.

[20] Beijing Rules, rule 15.2.

57. There is also a particular need to protect children's right to privacy. As stated in the Beijing Rules, "the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published" (rules 8.1 and 8.2). The right of children to privacy therefore justifies an exception to the fundamental principle that court proceedings shall be held in public.

58. States have an obligation to seek to "establish an effective organization for the administration of juvenile justice, and a comprehensive juvenile justice system" through "laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law".[21] The Committee on the Rights of the Child explained that "a comprehensive juvenile justice system further requires the establishment of specialized units within … the judiciary, the court system, the prosecutor's office", inter alia, as well as "specialized defenders or other representatives who provide legal or other appropriate assistance to the child".[22] The Special Rapporteur notes that specialized juvenile courts improve consistency, efficiency, coordination and respect for children's rights within the administration of justice. Specialized juvenile courts will not only improve how the justice system works for children but also allow judges, prosecutors, lawyers and judicial personnel to increase their expertise in working with children.

59. International human rights law requires that States establish a minimum age of criminal responsibility under which a child cannot be held accountable for his or her acts. While the Convention on the Rights of the Child does not provide a specific age, it says that the minimum age should reflect the mental capacity and moral competence of the child. According to the Committee on the Rights of the Child, the age of 12 years constitutes the absolute minimum age of criminal responsibility.[23] While the Special Rapporteur agrees that 12 years is an absolute minimum, she strongly believes that States should seriously consider increasing the minimum age of criminal responsibility as high as possible, in line with the latest available scientific research carried out on the subject of child mental development and competence.

60. In this context, the Special Rapporteur is extremely concerned about cases where children are tried as adults. Indeed, under some jurisdictions, for certain types of serious offences, while there exist a juvenile justice system and a legal framework applicable to child offenders, children can be tried as adults in the regular justice system. The Special Rapporteur believes that the possibility of trying children as adults not only goes against the essence of the rights contained in the Convention on the Rights of the Child, but also allows unacceptable room for arbitrariness. The decision to try a child as an adult is often left to the discretion of the court or a judge, who are certainly not qualified to assess whether a child has reached a level of mental development and discernment sufficient to be tried as an adult.

2. Children's participation as victims and witnesses

61. As highlighted by the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, "age should not be a barrier to a child's right to participate fully in the justice process".[24] For that reason, "every child should be treated as a capable witness, subject to examination, and his or her testimony should not be presumed invalid or untrustworthy by reason of the child's age alone as long as his or her age and maturity allow the giving of intelligible and credible testimony, with or without communication aids

[21] Committee on the Rights of the Child general comment No. 10, para. 90.
[22] Ibid., para. 92.
[23] Ibid., para. 32.
[24] Economic and Social Council resolution 2005/20 of 22 July 2005, annex, para. 18.

and other assistance".[25] The right of a child to participate in the justice process is not limited to criminal trials, but extends to civil proceedings such as those relating to divorce and separation, custody, care, adoption and inheritance matters.

62. The participation of children as either victims or witnesses in judicial proceedings can have a negative psychological impact on them, which is exacerbated when they have to go through insensitive treatment and procedures that do not integrate respect for their well-being and dignity and do not take into account their special needs and rights. In addition, participation in criminal proceedings often carries a non-negligible level of risk for both the physical and psychological integrity of the child. Special measures must therefore be put in place to protect child victims and witnesses from victimization or re-victimization in the justice system.

63. As already explained by the Special Rapporteur in the context of an analysis of the rights of women in the criminal justice system, "at minimum, two sets of protection measures are necessary to enable witnesses and victims to come forward safely for the purpose of collaborating with the criminal justice system: (a) measures and procedures put in place by the judicial authorities while investigating crimes or taking testimony in the courtroom; (b) protection measures and safeguards provided, when necessary, before, during and after judicial proceedings through formal witness protection programmes" (A/66/289, para. 64).

64. The following are examples of measures that can be taken during trials concerning children:

(a) Limit the number of interviews and statements given by the child, including by using video recording;

(b) Have the child testify in a separate courtroom; excluding the public from the court for part or the entirety of a trial;

(c) Make separate waiting rooms available for children;

(d) Limit the direct cross-examination by the alleged perpetrator;

(e) Prohibit the publication or dissemination of information that might reveal the identity of a victim or witness;

(f) Adjust questioning so as to eliminate unnecessary, intrusive, repetitive or embarrassing questions;

(g) Allow for frequent breaks during the testimony, altering the courtroom settings to make them less formal;

(h) Use a support person during testimony.

Needs may differ depending on the gender of the child, in which case measures will have to be tailored to take the specificities into account.

65. The Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime require that "where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child" (para.14). In this context, the existence of witness and victims protection programmes tailored to children's needs will provide for a more enabling environment for the reporting of cases, encouraging cooperation with the justice system and avoiding the re-victimization of children throughout the judicial process.

[25] Ibid

66. It is essential to remember that all processes in which a child is heard and participates must be voluntary, transparent, informative and respectful, be set in a child-friendly environment and use child-sensitive methods.[26]

3. Deprivation of liberty and other types of sanctions

67. As seen above, because of their unique vulnerability, children in conflict with the law require higher standards and broader safeguards to be applied to them, particularly at the sentencing stage in criminal proceedings. For instance, the Human Rights Committee recognized that article 24, paragraph 1, of the International Covenant on Civil and Political Rights, which grants children the right to special protection measures owing to their status as minors, "entails the adoption of special measures to protect the personal liberty and security of every child, in addition to the measures generally required by article 9 for everyone".[27]

68. While criminal sanctions can encompass a broad range of measures, the Special Rapporteur is particularly concerned about the situation of children deprived of their liberty as a result of a criminal trial. Indeed, in a recent report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment highlighted that "children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment". He further stated that "even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder".[28] Finally, he noted that a number of studies had shown that, "regardless of the conditions in which children are held, detention has a profound and negative impact on child health and development".[29]

69. According to the Havana Rules, deprivation of children's liberty should be limited to exceptional cases. The Convention on the Rights of the Child requires that a child may be deprived of his or her liberty only as a measure of last resort and for the shortest period of time possible (art. 37). It further stipulates that any decision to deprive a child of liberty must be subject to periodic review of its continuing necessity and appropriateness.[30] Finally, "the best interests of the child must be a primary consideration in every decision to initiate or continue the deprivation".[31]

70. It is essential, therefore, that judges in particular, but also prosecutors, be aware of the specific negative effects the criminal sanctions they can order may have on children, in particular sanctions involving deprivation of liberty. Prosecutors and judges must primarily consider the best interests of the child when requesting and imposing sanctions on children and this includes making an individual analysis of the circumstances of both the offence and the child. Prosecutors and lawyers should always first consider alternative measures to detention, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, to ensure that children are treated with full respect for their needs and rights, as well as for their well-being and development.[32]

71. The Special Rapporteur wishes to recall that some types of sanctions are forbidden under international law when it comes to their application to persons who were children at the time of the offence. She concurs with the Special Rapporteur on torture, who pointed

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[26] Committee on the Rights of the Child general comment No. 12, para. 134.
[27] Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 62.
[28] A/HRC/28/68, para. 16.
[29] Ibid., para. 33.
[30] See also Human Rights Committee general comment No. 35, para. 62.
[31] Ibid., para. 62.
[32] See article 40 of the Convention on the Rights of the Child.

out that the sentencing to death of juveniles is not only forbidden under international law but has also been accepted so universally as a serious violation of human rights that it must be considered a norm of *jus cogens*.[53] Life sentences with the possibility of release or parole are also expressly prohibited under international human rights law.[54]

72. Judges and prosecutors must also apply the principle of the best interests of the child in the context of pretrial detention. On many occasions, the Special Rapporteur has observed that pretrial detention was the rule rather than the exception, in contradiction of principles of international law. This situation is particularly worrying when children are held in pretrial detention. She therefore calls on the competent authorities to be extremely vigilant when imposing pretrial detention on children, which, as in instances of deprivation of liberty ordered at the end of a trial, they must justify in writing, having shown that they took into account the child's special needs, rights and best interests.

73. Children are also detained for other reasons than as the result of a criminal trial. This is the case of migrant or asylum-seeking children. Article 9, paragraph 4, of the International Covenant on Civil and Political Rights provides that anyone who is deprived of their liberty by arrest or detention is entitled to have the lawfulness of their detention reviewed before a court. Thus, in exercising this judicial oversight competence, judges also have to take into account the best interests of the child.

4. Criminal sanctions against parents

74. The Special Rapporteur wishes to draw attention to the situation of children whose parents have been sentenced to imprisonment. As recognized by the African Committee of Experts on the Rights and Welfare of the Child, children may face many violations of their rights when their parents or primary care giver come into conflict with the law, including stigmatization by association and harm caused by the separation.[55] Children whose parents are imprisoned also often experience deterioration in their living conditions, their relationships with others and their community, and their physical and mental integrity.

75. For this reason, the Bangkok Rules provide that "non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate" (rule 64). Article 30 of the African Charter on the Rights and Welfare of the Child states that "special treatment" should be provided to "expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law". In its general comment No. 1 (2013) on article 30, the African Committee of Experts on the Rights and Welfare of the Child asserted that the provisions of article 30 apply not only to mothers, but also to the primary caregivers, who may be the father, another member of the family or a foster parent.[56] The Special Rapporteur considers that prosecutors, when requesting sanctions against parents—and judges, when imposing such sanctions—have a responsibility to consider not only the individual circumstances of the defendant, but also the best interests of the defendant's children.

76. Children who are living in prison with their parents, usually their mother, are particularly vulnerable to violations of their right to development, health care, education and recreation. The Special Rapporteur recalls that decisions to allow children to stay with their mothers in prison should always be based on a careful consideration of the best interests of the children that includes an individual analysis of the circumstances of the

[53] A/67/279, para. 62.

[54] See article 37(a) of the Convention on the Rights of the Child, as well as general comment No. 10, and Human Rights Committee general comment No. 21 (1992) on humane treatment of persons deprived of their liberty.

[55] African Committee of Experts on the Rights and Welfare of the Child general comment No. 1 on children of incarcerated and imprisoned parents and primary caregivers, para. 3.

[56] Ibid., para. 10.

case.[37] It is also important that the child's situation should regularly undergo judicial review, as circumstances may change and affect the analysis of the best interests of the child.

77. Children of parents sentenced to death often suffer a particularly devastating ordeal. According to the Working Group on Children of Incarcerated Parents, "existing research has consistently connected a parent's death sentence or execution with major psychological and emotional implications for children and families", some children even present post-traumatic stress disorder symptoms.[38] The trauma caused by both the anxiety relating to the anticipation of the execution and the actual execution itself must be taken into account by prosecutors and judges before requesting or imposing the death penalty on defendants with children. Despite the particular emotional and psychological distress of children of parents sentenced to death—who also often experience social isolation and stigmatization—the Special Rapporteur is extremely concerned that these children are given little attention and support. In this context, it is even more important for prosecutors and judges to consider the best interests of the defendant's children before requesting and ordering the death penalty.

D. Alternatives to judicial proceedings

78. According to the Convention on the Rights of the Child, the aim of juvenile justice is the child's rehabilitation and social reintegration. The Beijing Rules provide that "the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence" (rule 5.1). Yet, the Special Representative of the Secretary-General on Violence against Children has pointed out that "more than 1 million children are deprived of their liberty worldwide, and countless children face violent and degrading treatment throughout the criminal justice process".[39]

79. For these reasons, the Special Rapporteur considers that alternatives to criminal proceedings and trial should be available for children alleged as, accused of, or recognized as having infringed penal law. The necessity to provide for alternatives to criminal proceedings in juvenile cases has been underlined by both the Human Rights Committee and the Committee on the Rights of the Child.[40] These alternative mechanisms can either replace criminal proceedings or complement them, and they should be available at all stages of criminal justice proceedings, from the moment of arrest until after the conviction, when there is one.

80. The process of dealing with children alleged as, accused of, or recognized as having infringed penal law without resorting to criminal proceedings is known as "diversion" and serves to avoid the possible negative effects of criminal proceedings on children. Diversion can involve different types of measures, including measures based on the principle of restorative justice.

81. According to the basic principles on the use of restorative justice programmes in criminal matters, "restorative justice is an evolving response to crime that respects the dignity and equality of each person, builds understanding, and promotes social harmony through the healing of victims, offenders and communities" (preamble)[41]. Restorative

[37] Bangkok Rules, rule 49.

[38] Working Group on Children of Incarcerated Parents, "Children of parents sentenced to death or executed", August 2013, p. 3.

[39] Special Representative of the Secretary-General on Violence against Children, "Promoting restorative justice for children", 2013, p. 1.

[40] See Human Rights Council general comment No. 32, para. 44, and Committee on the Rights of the Child general comment No. 10.

[41] Economic and Social Council resolution 2002/12.

justice aims to rehabilitate and reintegrate child offenders in their communities "through a non-adversarial and voluntary process, based on dialogue, negotiation and problem-solving" and by ensuring that they understand "the harm caused to the victim and the community" and acknowledge "accountability for criminal behaviour and reparation of its consequences".[42]

82. Guideline 18 of the Guidelines on the Role of Prosecutors specifically provides that:

> prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pretrial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

83. Guideline 19 stipulates that "prosecutors shall use their best efforts to take prosecutor action against juveniles only to the extent strictly necessary". The Beijing Rules further provide that "prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings" (rule 11, para. 2). In some instances, judges can order diversion before the beginning of a trial at the stage of preparatory hearings.

84. Against this background, the Special Rapporteur considers that promoting strategies that provide alternatives to formal criminal proceedings, including measures based on the principle of restorative justice, is as important as building and strengthening child-sensitive administration of justice for juveniles. However, as noted by her predecessor, "the use of alternative mechanisms should not lead to substandard justice or obstruct the right to obtain a court ruling" (A/HRC/8/4, para. 35). It is therefore essential that any alternative measures, including but not limited to measures applied in the context of diversion, provide children with essential due-process guarantees to ensure their fairness. Moreover, the Committee on the Rights of the Child explained in its general comment No. 10 that diversion "should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to get that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding[s]" (para.27). Lastly, the child must freely and voluntarily give consent for any measures of diversion and be given access to legal assistance to assess the alternative measure proposed.

85. The Special Rapporteur concurs with the Special Representative of the Secretary-General on Violence against Children, who, in the context of discussing restorative justice measures, noted that "to ensure that the rights of the child are respected at all times and that the process is lawfully conducted, a competent authority, such as a child justice court, should have effective judicial overview".[43]

E. Education, training and capacity-building for judges, prosecutors and lawyers

86. As seen throughout the preceding sections of this report, appropriate education, training and capacity-building are fundamental to ensure that those who come into contact with children in the justice system, especially judges, prosecutors and lawyers, respect, protect and fulfil children's rights. A number of international instruments, including the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of

[42] Special Representative of the Secretary-General on Violence against Children, op.cit., p. 2.
[43] Ibid., p. 20.

Lawyers, the Guidelines on the Role of Prosecutors, and the Bangalore Principles of Judicial Conduct, emphasize the necessity of quality education and proper training to enable judges, prosecutors and lawyers to discharge their functions in a manner that ensures equality of treatment of all before the courts.

87. The Special Rapporteur is convinced that appropriate education and training is a determining factor in guaranteeing the competence, independence and impartiality of the justice system. In her first report to the Human Rights Council, the Special Rapporteur noted that the lack of appropriate capacity-building initiatives had a direct impact on judges' capacity to render justice independently and impartially. As a consequence, judges and lawyers require opportunities to enhance their capacity to develop argumentation and analyse issues from a human rights perspective (A/HRC/14/26, para. 24).

88. When it comes to children, understanding their development is fundamental to understanding their behaviour and their capacity to participate in legal proceedings, including their ability to interact and communicate with those who assist them, comprehend what is at stake, and make informed choices about their situation.[44] Legal-assistance providers have a duty "to understand how children communicate cognitively, linguistically, and emotionally and how this capacity changes over the course of childhood", and that duty requires "training in how to communicate with children".[45] Within their respective functions, lawyers, prosecutors and especially judges have an obligation to uphold international human rights law, including with respect to children's rights. Moreover, as one of the three branches of power, the judiciary is directly bound by the international human rights obligations of the State.

89. Building a child-friendly justice system, therefore, requires institutionalized and sustained efforts in the form of specialized training programmes, on-the-job education and capacity-building that focus on international human rights norms and standards, fundamental principles and related obligations. It also requires national laws to protect children's rights. Most child-specific international instruments, including the Convention on the Rights of the Child, the Beijing Rules, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, make reference to this necessity.

90. These international human rights treaties and other instruments, as well as the jurisprudence arising from judicial and quasi-judicial bodies, provide judges, prosecutors and lawyers alike with legitimate instruments for adjudication that respects children's rights, needs and vulnerabilities.

IV. Conclusions

91. **Every day, throughout the world, countless children come into contact with the justice system. As justice systems are often not adapted to the specificities of children, far too many children suffer adverse consequences from treatment that directly violates or disregards their fundamental human rights. In this context, judges, prosecutors and lawyers have, within the limits of their professional functions, a unique opportunity to contribute significantly to respecting, protecting and fulfilling children's rights. By their actions judges, prosecutors and lawyers can influence the future course of children's lives. As a result, by the very nature of their functions, they have a great responsibility towards children.**

92. **The Special Rapporteur has considered it important to go beyond the more limited notion of juvenile justice in this report so as to reflect the diverse experiences**

[44] UNDP, UNICEF and UNODC, *Child-Friendly Legal Aid in Africa* (2011), p. 6.
[45] Ibid., p. 11.

of children when they encounter the justice system as victims or witnesses, or because they are in conflict with the law, or they are parties to justice proceedings. In all these aspects of the justice system, children have special rights, needs and interests that must be considered.

93. The administration of justice, whether in criminal, civil or administrative processes, must therefore be guided at all times and in all matters concerning children by the overriding principles of non-discrimination, the best interests of the child, the right to life and development and the right to be heard. Creating and strengthening training and capacity-building programmes on international human rights law and jurisprudence, in particular on children's rights, for all justice operators is an important requisite for a competent, independent and impartial judiciary and legal profession to be in a position to deliver justice to children.

94. Proper education and training enable judges, prosecutors and lawyers to acquire the necessary knowledge and skills to discharge their duties in conformity with States' legal obligations relating to children. Finally, the Special Rapporteur wishes to emphasize the importance of children's agency. Indeed, the purpose of rendering the administration of justice child-sensitive is not to make children even more dependent than they already are, but to empower them to have a say and make decisions about matters that may affect them.

V. Recommendations

95. The following recommendations should be read in conjunction with previous recommendations of the Special Rapporteur, in particular those contained in reports A/66/289, A/HRC/8/4, A/HRC/14/26 and A/HRC/23/43.

General recommendations

96. States should put in place a legal framework conducive to the development and reinforcement of a child-sensitive justice system, in line with international human rights instruments relating to children, especially the Convention on the Rights of the Child.

97. Children's rights, in particular the four fundamental principles contained in the Convention on the Rights of the Child, should be taken into account by judges, prosecutors and lawyers in the performance of their functions in all matters concerning children.

Children's access to justice and legal aid

98. States should develop specific strategies, policies and measures to identify and tackle obstacles encountered by children in accessing justice.

99. To the extent possible, legal aid should be provided free of charge to all children in both criminal and civil proceedings. Such legal aid should be tailored to the specific needs of children and respect, in particular, children's right to express their views and to be heard.

100. States must seriously consider the developmental difference between children and adults when designing legal assistance schemes for children. Children's needs and best interests should also be integrated into existing legal assistance programmes.

101. Specific legislation should ensure minimum quality standards for the work of paralegals and define the types of legal services they can offer.

102. Where they exist, informal justice systems should integrate and apply international human rights norms and standards concerning children in all their decision-making procedures.

Child-sensitive adjudication

103. States should design, develop and strengthen justice systems that are sensitive to children's needs, rights and well-being, and allow for their best interests to be the primary consideration. Child-sensitive justice should extend to all relevant judicial proceedings affecting the child.

104. In judicial proceedings, children should not only be granted all guarantees generally recognized in international human rights instruments, but also guarantees specific to their status as minors.

105. States should set a minimum age for the criminal responsibility of children that takes into account new scientific findings on the level of maturity and discernment of children; this minimum age should be as high as possible, but never lower than 12 years old.

106. Regardless of the circumstances of the crime, children should never be tried as adults. Their personal circumstances, including the fact that they are minors, should always be weighed up in all judicial proceedings.

107. States should adopt special measures and protection, including protection programmes, to facilitate children's participation in criminal proceedings as victims and witnesses in a way that respects and protects their needs and rights.

108. When sentencing children to criminal sanctions, judges should consider the effect of their sentences on the child and balance this against the child's best interests. Prosecutors should also make provision of the same considerations when requesting criminal sanctions in the cases under their purview. Children's deprivation of liberty should always be a measure of last resort and for the shortest possible period of time.

109. When sentencing parents, in particular to the death penalty, judges should also consider the effect of their sentences on the well-being of the child and the child's best interests. Prosecutors should apply the same consideration when requesting sanctions against parents.

Alternatives to judicial proceedings

110. Alternatives to judicial proceedings, including measures based on the principle of restorative justice, should be available for children; such alternatives should always be considered first.

111. States should establish guidelines and standards to govern the possibilities of diverting children away from the criminal justice system and of using restorative justice programmes, thereby preventing arbitrariness. Each case should nevertheless be considered individually and in the light of the specific circumstances of the case and the child.

Education, training and capacity-building for judges, prosecutors and lawyers

112. Institutional training on children's rights—including relevant national, regional and international human rights law and jurisprudence—should be established and made compulsory for judges, prosecutors and lawyers, so as to ensure a child-friendly justice system.

113. International human rights law, in particular regarding children's rights, should be included in the curricula of all law faculties and law schools, and in the

curricula of schools for the judiciary and the academic programmes of bar associations.

114. **Children's rights expertise should be promoted, valued and integrated into all types of legal training and capacity-building for the judiciary and members of the legal profession.**

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Promotion and protection of all human rights, civil, Political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Corrigendum

Paragraph 71

The last sentence *should read*

Life sentences without the possibility of release or parole are also expressly prohibited under international human rights law.[34]

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Addendum

Mission to Qatar*

Summary

The Special Rapporteur on the independence of judges and lawyers conducted an official visit to Qatar from 19 to 26 January 2014 with the purpose to examine both the achievements and challenges of Qatar in ensuring the independence of the judiciary and the free exercise of the legal profession.

The Special Rapporteur met with a number of senior government officials at the Ministries of Foreign Affairs, Justice, Interior and Labour, as well as the Chief Justice of the Court of Cassation and other members of the judiciary, the Attorney-General, the speaker of the Advisory Council, representatives of the Qatar Financial Centre Authority and the Qatar International Court and Dispute Resolution Centre, the National Human Rights Committee, lawyers, members of the diplomatic community and other stakeholders.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in Arabic only.

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The Special Rapporteur presents her findings and concerns regarding (a) the independence and impartiality of the judiciary, including respect for the principle of separation of powers, the selection and appointment of judges and the impartiality of the judiciary; (b) non-Qatari judges; (c) accountability and disciplinary measures for judges; (d) fair trial, due process guarantees and the administration of justice; (e) access to justice and the situation of migrant workers; (f) women in the justice system; (g) prosecution services; (h) lawyers; and (i) education and training.

The Special Rapporteur recognizes that Qatar has come a long way in a short time with respect to developing its justice system. Yet, in spite of Qatar's progress and achievements, the Special Rapporteur is concerned that the challenges and shortcomings she identified are serious and negatively affect the independence and impartiality of the justice system, as well as the realization of people's human rights. If left unaddressed, those challenges and shortcomings will also undermine positive reform efforts.

Annex

[Arabic and English only]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Qatar

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I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, visited Qatar from 19 to 26 January 2014 at the invitation of the Government. She wishes to commend the Government's recent engagement with human rights mechanisms and hopes that this engagement will continue and be strengthened.

2. The purpose of the visit was to examine, in the spirit of cooperation and dialogue, both the achievements and shortcomings of Qatar in ensuring the independence of the judiciary and the free exercise of the legal profession. The Special Rapporteur also concentrated on key issues regarding the administration of justice, such as due process and fair trial guarantees, access to justice and legal aid, the position of women in the justice system, accountability of judges and challenges related to the independence of non-Qatari judges.

3. The Special Rapporteur visited Doha, where she met with a number of senior government officials at the Ministries of Foreign Affairs, Justice, Interior and Labour, as well as the Chief Justice of the Court of Cassation and other members of the judiciary, the Attorney-General, the speaker of the Advisory Council and lawyers. She also met with representatives of the Qatar Financial Centre Authority and the Qatar International Court and Dispute Resolution Centre, the National Human Rights Committee and the diplomatic community, as well as other stakeholders.

4. The Special Rapporteur wishes to warmly thank the Government of Qatar for its invitation and engagement with her mandate, while fully respecting her independence. She notes with appreciation that, in the region, Qatar was the first State to issue a standing invitation to the special procedures of the Human Rights Council, on 1 June 2010, and the first to create a National Human Rights Institution in accordance with the principles relating to the status of national institutions (Paris Principles). She also thanks the United Nations Human Rights Training and Documentation Centre for South-West Asia and the Arab Region for its dedicated support in organizing the visit, and all those who dedicated their time to share their expertise and opinions with her.

II. Justice system

5. A dual judicial system, composed of sharia and adlia courts, prevailed in Qatar from its independence in 1971 until the enactment of Law No. 10 of 2003, which set up a unified court system.

A. Constitutional provisions

6. The Permanent Constitution of Qatar was ratified by public referendum on 29 April 2003, promulgated by the Emir on 8 June 2004 and entered into force on 9 June 2005. It recognizes the principle of separation of powers in its article 60.

7. The judicial authority is regulated by chapter five of part IV of the Constitution, which includes provisions establishing the supremacy of the law (article 129) and recognizing the independence of the judiciary (articles 130 and 131), that judges shall not be removed from office arbitrarily (article 134), that court sessions shall be public (article 133) and that everyone shall have access to the courts (article 135). Chapter five also enshrines the existence of the Supreme Council of the Judiciary, the body in charge of the administration of the courts (article 137). The Constitution further defines the general role of the Attorney-General as that of conducting public prosecution in the name of the

people, supervising law enforcement and ensuring the application of criminal laws (article 136).

8. In addition, the Constitution guarantees in its part III a selected list of fundamental rights and freedoms. Of interest to the Special Rapporteur's mandate, guarantees relating to equality before the law, the principle of legality, the right not to be arbitrarily arrested and detained, the presumption of innocence and the right to defend oneself are enshrined. Finally, article 6 of the Constitution stipulates that the State shall respect and strive to implement all international conventions and agreements to which it is a party.

B. Legal framework

9. Qatar is governed by a legal system based on a mixture of civil law and sharia (or Islamic law); sharia law is recognized in the Constitution as the principal source of legislation (article 1). British common law-inspired legislation is also applied by the institutions of the Qatar Financial Centre (see below). Some of the most fundamental pieces of legislation related to the mandate of the Special Rapporteur are listed in this section.

10. The judiciary is governed by Law No. 10 of 2003 "on the Judicial Authority" (as amended), which establishes, inter alia, the structure, composition, jurisdiction and internal functioning of the courts; the Supreme Council of the Judiciary, its composition and competence; the recruitment conditions, appointment, promotion, tenure and retirement age of judges; and the independence, duties and accountability of judges, as well as disciplinary procedures. Law No. 10 of 2003 was complemented by Law No. 12 of 2008, which set up a Supreme Constitutional Court (not yet operational, see below).

11. Law No. 10 of 2002 "on the Public Prosecution" (as amended) established the public prosecution as an independent judicial body headed by the Attorney-General. The law sets out the composition and hierarchy of the public prosecution; the recruitment conditions, appointment, promotion, tenure and retirement age of prosecutors; and the duties and accountability of prosecutors, as well as disciplinary procedures. The Law also determines the powers of the public prosecution, which include, among other functions prescribed by the law, the investigation of crimes and the supervision of the investigation when delegated; the initiation of criminal cases, their conduct before the courts and the launching of appeals against judgments and all procedures related thereto; and the monitoring of prisons and other places of detention.

12. The rights and duties of lawyers are defined in Law No. 23 of 2006 "on the Code of Law Practice", which also regulates the conditions to be admitted and registered as a practicing lawyer; disciplinary proceedings and measures; the provision of free legal aid; and the allocation of licenses to practice law to international firms and permits to practice law to non-Qatari lawyers.

13. The legal framework is further completed by the Penal Code (Law No. 11 of 2004, as amended) and the Civil Code (Law No. 22 of 2004); the Criminal Procedure Code (Law No. 23 of 2004, as amended) and the Civil and Commercial Procedures Law (Law No. 13 of 1990, as amended), both of which the Government recognized needed updating; and Law No. 12 of 2005 on Procedures in Non-penal Cassation Appeals (as amended).

14. At the international level, Qatar is a State party to several human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. At the regional level, Qatar ratified the Arab Charter on Human Rights, which contains a comprehensive set of binding provisions related to the mandate of the Special Rapporteur, including the right to an effective remedy for violations of the rights and freedom recognized in the Charter (article 23); the right to liberty and security of person and protection from arbitrary arrest (article 14); equality and non-discrimination before the law (article 11); recognition of all as a person before the law (article 22); equality before the courts and tribunals (article 12); the independence of the judiciary and protection from interference and threats (article 12); fair trial before and independent, impartial and competent tribunal (article 13); the principle of *nullum crimen sine lege* (article 15); a series of due process and fair trial guarantees in criminal cases, including the principle of presumption of innocence (article 16); and the principle of *ne bis in idem* (article 19).

C. Court structure

16. All the courts are currently concentrated in Doha, but the Supreme Council of the Judiciary has the competence to create departments of the Court of First Instance in other cities, and hearings can take place at locations away from the home courts.

1. Supreme Constitutional Court

17. The Supreme Constitutional Court was established by Law No. 12 of 2008 but is not yet operational. The main purpose of the Court is to settle disputes over the constitutionality of laws and regulations in Qatar (article 12). The Court also has jurisdiction to, inter alia, settle disputes of competence between courts and review, upon appeal, decisions of lower courts on any matter of law or legal inference (article 12). Its judgements and decisions are final (article 27).

18. The Constitutional Court should be composed of a president, appointed by an order of the Emir, and six judges, appointed by a decree of the Emir (article 2). A General Assembly consisting of all the members of the Court is in charge of all matters relating to regulation of the Court, internal matters and matters related to its members (article 5).

19. The Supreme Constitutional Court was scheduled to start functioning on 1 October 2008. On 27 September 2009, the Emir reportedly appointed its president, yet at the time of writing none of the remaining six judges had been appointed and the Court was still not functioning. While administrative and logistical reasons were cited for the delay, it remains unclear why the Court is not yet operational more than five years after the enactment of the law that established it. The Special Rapporteur wishes to strongly encourage that the Court be formed, start functioning as early as possible and be provided with all the resources and guarantees necessary for its full independence and proper administration.

20. A special chamber within the Court of Cassation reportedly used to consider constitutional issues, but its existence ceased with the enactment of Law No. 12 of 2008. The Special Rapporteur is concerned that, because of the important delay in operationalizing the Supreme Constitutional Court, it is currently impossible to appeal the constitutionality of laws in Qatar. This could create legal uncertainty and jeopardize the enforcement of human rights.

2. Court of Cassation

21. The Court of Cassation was established by Law No. 10 of 2003 as the highest court of appeal; it has competence to review both rulings and proceedings of the law. Constitutional issues can in theory be appealed to the Supreme Constitutional Court, but this Court has yet to become operational. The Court comprises different circuits or chambers to "hear appeals on the interpretation of provisions and measures enacted by law"

(article 6). The circuits are established by resolution of the Supreme Council of the Judiciary and its members are appointed by the president of the Court.

22. The Court of Cassation is composed of a president, appointed by order of the Emir, and a sufficient number of vice-presidents and judges, appointed by decree of the Emir upon proposition of the Supreme Council of the Judiciary. The Court also has a General Assembly, consisting of all of the Court's judges, which has competence to consider a number of issues, including the formation of circuits, the allocation of cases to different circuits, the organization of work during judicial vacation and other issues relating to the internal affairs of the Court.

3. Court of Appeal

23. The Court of Appeal was also established by Law No. 10 of 2003. It comprises different circuits or chambers set up by resolution of the Supreme Council of the Judiciary to hear appeals of orders, ruling and sentencing in *Hudud* (ordained punishment) and *Qisas* (retribution) cases, criminal cases, civil and commercial cases, family and personal status-related cases, inheritance cases and administrative or other disputes. The members of the different circuits are appointed by the president of the Court.

24. The Court of Appeal is composed of a president and a sufficient number of presidents, vice-presidents and judges appointed by decree of the Emir upon proposition of the Supreme Council of the Judiciary. The Court also has a General Assembly, consisting of all of the Court's judges, with the same competence as the General Assembly of the Court of Cassation.

4. Court of First Instance

25. The Court of First Instance was also established by Law No. 10 of 2003. It comprises different circuits or chambers set up by resolution of the Supreme Council of the Judiciary with jurisdiction over *Hudud* and *Qisas* cases, as well as criminal, civil, commercial, family and personal status-related, inheritance, administrative and other cases. The members of the circuits are appointed by the president of the Court.

26. The Court of First Instance is composed of a president and a sufficient number of presidents and judges appointed by decree of the Emir upon proposition of the Supreme Council of the Judiciary. The Court also has a General Assembly consisting of all the Court's judges with the same competence as the General Assemblies of the Courts of Cassation and Appeal.

5. Supreme Council of the Judiciary

27. The Supreme Council of the Judiciary was first established in 1999 to ensure the independence of the judiciary before being subsequently enshrined in both Law No. 10 of 2003 (chapter five) and the Constitution of 2004 (article 137). In a welcome development, the Council took over from the Ministry of Justice with regard to the administration of the courts. Its competence, as defined by the law, includes expressing its opinion on issues relating to the judiciary and studying and proposing legislation for the development of the judicial system; expressing its opinion on the appointment, promotion, transfer and assignment, secondment and retirement of judges; and considering grievances relating to judicial affairs. The Council can also exercise any other functions prescribed to it by law, as well as consider issues which the president of the Council decides to bring to its attention.

28. The Council is composed of seven members who are all judges: the president of the Court of Cassation (who is also the Council's president), its most senior vice-president (who is also the Council's vice-president) and its most senior judge; the president of the

Court of Appeal, its most senior vice-president and its most senior judge; and the president of the Court of First Instance.

D. Qatar Financial Centre

29. Law No. 7 of 2005 created the Qatar Financial Centre (QFC), an entity with its own institutions and authorities and designed "to attract international banking, financial services, insurance activities, headquarter of businesses and other businesses" (article 5). According to the Law, the QFC's authorities can legislate on issues under QFC competence and pass regulations grounded in common law.

30. Law No. 2 of 2009 established the QFC Regulatory Tribunal (article 4) and the Civil and Commercial Court (article 5), also referred to as the Qatar International Court. Both judicial bodies are considered courts of Qatar, but they are set apart from the ordinary court structure established by Law No. 10 of 2003 and apply a different set of legal provisions and procedures.

31. The QFC Regulatory Tribunal was set up to hear appeals of decisions of any QFC authority or body. The Tribunal is composed of a president and a sufficient number of judges appointed by the Council of Ministers for a term of five years, renewable. The president is in charge of the administration of the Tribunal. The Tribunal applies the QFC law, amendments and regulations. When QFC law and regulations and the procedural rules set by the Tribunal are silent on a matter, the Tribunal will apply Qatar's Civil and Commercial Procedures Law. The decisions of the Regulatory Tribunal are enforceable and can only be appealed to the appeal circuit of the Civil and Commercial Court.

32. The Civil and Commercial Court was created as a specialized court to resolve disputes between institutions and other bodies in Qatar, as well as to serve as an appeal body from decisions of the QFC Regulatory Tribunal. The Court is composed of a president and a sufficient number of judges appointed by the Council of Ministers for a term of five years, renewable. The president is in charge of the administration of the Court. The Court comprises a first instance circuit and an appeal circuit. The Court applies QFC law and regulations if the dispute relates to a QFC matter. Where the parties consent to the Court's jurisdiction, the Court will apply the law applicable to the dispute, for example, the law chosen by the parties in a contract. Decisions of the trial circuit are enforceable and can only be appealed to the appeal circuit. Decisions of the appeal circuit are final.

33. The Qatar Financial Centre created de jure and de facto a parallel judicial system. The Special Rapporteur was informed that a rapprochement was under way between the two justice systems; a law was reportedly drafted in June 2012, but not yet passed to clarify the relationship between the Civil and Commercial Court and the QFC Regulatory Tribunal and the ordinary court system; the law would place both specialized courts under the umbrella of the Supreme Council of the Judiciary.

III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

34. The current judicial system in Qatar was recently established and is still under development. It faces major shortcomings and challenges, which directly affect the delivery of justice and the realization of human rights. These shortcomings and challenges must be assessed and addressed in a timely fashion in order to bring the administration of justice in line with international human rights standards.

A. Independence and impartiality of the judiciary

1. Separation of powers and interferences in the independence of the judiciary

35. It is the principle of the separation of powers, together with the rule of law, which opens the way to an administration of justice that provides guarantees of independence, impartiality and transparency. For this reason, there should be clear demarcation between the respective competences of the different branches of power. A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable, or where the latter is able to control or direct the former, is incompatible with the notion of an independent tribunal.[1]

36. While any direct interference in the independence of judges is extremely difficult to document, reports of pressures of the executive on the work of the judiciary, particularly in cases involving powerful persons, are a matter of concern to the Special Rapporteur. For instance, in 2009, 33 Qatari judges reportedly tendered their resignation to protest over what they had described as continued interference in their work. Regretfully, no information regarding whether or not the allegations had been appropriately investigated was provided to the Special Rapporteur.

37. Several interlocutors expressed serious concerns regarding limitations to the jurisdiction of the courts. According to article 13 of the Law on the Judicial Authority, courts have no competence over issues related to sovereignty and nationality. Under Law No. 7 of 2007 on the Settlement of Administrative Disputes (as amended), which set up administrative circuits in the Courts of First Instance and Appeal, Emiri orders, resolutions and decrees, resolutions issued under Law No. 17 of 2002, and decisions issued under the laws on private associations and foundations, publications, the entry, residence and deportation of foreigners, inter alia, are excluded from the competence of the courts. The Special Rapporteur wishes to note that, in accordance with to the Basic Principles on the Independence of the Judiciary, the courts shall have jurisdiction over all issues of a judicial nature. The limitations set to the jurisdiction of the courts could also lead to the denial of an effective remedy.

38. Finally, the Special Rapporteur believes that it is important to note when discussing the separation of powers that the legislative branch is not clearly separated from the executive power. Indeed, the 35 members of the current Advisory Council were appointed by the Emir and the Council has no formal legislative role. The Permanent Constitution made provision for the formation of a 45-member Advisory Council, 30 members of which would be elected by direct, general and secret ballot, with a limited legislative authority to draft and approve laws. Yet, elections were not held and the former Advisory Council remains in place. No date for these elections has been announced so far.

2. Selection and appointment of judges

39. All judges, including non-Qataris, are appointed by the Emir upon proposition of the Supreme Council of the Judiciary (as way of exception the president of the Court of Cassation is directly appointed by the Emir). Several interlocutors declared that being appointed by the Emir gave judges legitimacy and protection. Despite such affirmations, the Special Rapporteur is concerned that this current mechanism for appointing judges may expose them to undue political pressure. Appointments or nominations by the Emir can

[1] See general comment 32 of the International covenant on civil and political rights, available from CCPR/C/GC/32.

have a strong influence on judges' attitudes and behaviour, particularly concerning representatives of the executive.

40. The selection of judges is, however, under the purview of the Supreme Council of the Judiciary, composed of seven judges appointed ex officio. The basic requirements and qualifications to become a judge are listed in Law No. 10 of 2003. The selection process to join the judiciary is set in two steps. First, a candidate must be selected and be nominated as assistant judge by the Council. The position of assistant judge lasts three years, including one year of compulsory training at the Centre for Legal and Judicial Studies, where the assistant has to pass both oral and written examinations, some carried out in an anonymous manner. After this mandatory period, the application of the candidate will be considered again by the Council, which will decide whether or not to recommend the appointment.

41. The Special Rapporteur wishes to highlight the importance of the establishment and application of clear, objective and transparent criteria, related in particular to qualifications, integrity, ability and efficiency, in the selection of judges, in order not only to identify the most suitable candidates and increase the perception of a fair selection process, but also to secure their independence. In this context, competitive examinations conducted at least partly in a written and anonymous manner can serve as an important tool in the selection process.

42. The security of tenure of Qatari judges is guaranteed until the mandatory retirement age set forth in the law (70 years, with the possibility of exceptional extension). The Special Rapporteur is nevertheless troubled by article 63, paragraph 5, of Law No. 10 of 2003, according to which the Emir has competence to dismiss judges "in the public interest". In her view, such ground for dismissal is vague and does not comply with international standards regarding disciplinary measures against judges.

3. Impartiality

43. The Special Rapporteur is concerned by reported instances of lack of impartiality, bias and improper behaviour of judges. She heard some serious allegations, according to which not only the police and prosecutors would discriminate against non-nationals, but also judges. Among foreigners residing in Qatar, the dominant perception is that the courts do not treat Qataris in the same way. Some interlocutors also noted that this alleged discriminatory attitude against foreigners is not manifested in the same way and with the same strength, depending on the nationality of the person or his or her economic or work status in the country.

44. It is worth noting that the State has the obligation under international human rights law to guarantee the right to a fair trial to all individuals within its jurisdiction regardless of nationality or any other status. Judges should also perform their judicial functions without favour, bias or prejudice and should not manifest, by words or conduct, bias or prejudice towards any person or group on irrelevant grounds, including race, colour, sex, religion or national origin.[2] The Special Rapporteur wishes to underline the importance of an impartial and proper behaviour of judges, including when making decisions and passing judgments, as foreigners living in Qatar already by far outnumber nationals, and such imbalance is foreseen to increase in the near future.

45. The Special Rapporteur was told that, while judges and prosecutors have separate chambers on court premises, they often sit and chat together and enter courtrooms together. The Special Rapporteur also heard claims that judges and prosecutors discuss minutes of court hearings together. As noted in the Bangalore Principles of Judicial Conduct, in his or

[2] See Bangalore Principles of Judicial Conduct.

her personal relations with individual members of the legal profession, a judge should avoid situations that might reasonably give rise to suspicion or appearance of favouritism or partiality, especially when such situations are to the detriment of the right to an adequate defence or the independence of lawyers.

B. Judges who are non-nationals of Qatar

46. Many judges from other Arab countries are recruited to serve in the Qatari judiciary on a temporary basis. The salaries and allowances offered are extremely competitive and interested candidates are easily found in countries such as Egypt, Jordan, Morocco or the Sudan. Such a phenomenon is far from common throughout the world. According to the authorities, hiring non-Qatari judges became necessary to cope with the lack of qualified and interested nationals. The authorities also said that the Qatari judiciary needs the expertise of non-Qatari judges to train their less experienced Qatari colleagues and support the development of the judicial system. In the longer term, the judiciary would only be composed of nationals.

47. The independence of these non-Qatari judges is a complex issue that requires careful consideration. The Special Rapporteur regrets that no official figures on non-Qatari judges were provided during the visit, including their number, countries of origin, years spent working in Qatar, distribution at various hierarchical levels or how they were selected.

48. The tenure of non-Qatari judges is not guaranteed in the same way as that of national judges. According to the information received, they are recruited under temporary contracts that have to be renewed annually. The total length of the contract nevertheless depends on the rules regulating their secondment in their country of origin. Therefore, a non-Qatari judge's contract can only be renewed up to a certain number of years, which may vary depending on his country of origin. For this reason, the authorities explained that the temporary nature of non-Qatari judges' tenure is inevitable.

49. Even if no cases were reported, the Special Rapporteur is concerned that non-Qatari judges can be dismissed at any time, which renders them extremely vulnerable to pressures from any side, including from the public prosecution, lawyers and the executive. In addition, the social benefits and allowances allocated to national and non-Qatari judges are allegedly different.

50. While the Special Rapporteur understands the rationale behind the hiring of non-Qatari judges and its limitations, she remains concerned about their independence. She also believes that more could be done to secure the tenure of non-Qatari judges, even if only for a fixed period of time. Their conditions of work also need to be revised as no discrimination should be tolerated between national and non-Qatari judges, except that brought on by the rules of secondment of the country of origin.

51. The Special Rapporteur would also like to note that the reduction of the number of non-Qatari judges is a legitimate path for the Qatari authorities to follow. However, such a process must only be implemented in full conformity with the international human rights obligations of the State and its national legislation.

C. Accountability and disciplinary measures

52. Another shortcoming affecting the independence and impartiality of the judiciary is the absence of a written code of conduct or ethics for judges of the ordinary court system. It is important to bear in mind that the requirement of independence and impartiality does not aim at benefitting the judges themselves, but rather the court users, as part of their

inalienable right to a fair trial. Integrity and accountability are therefore essential elements of judicial independence and intrinsically linked to the implementation of the rule of law. While Law No. 10 of 2003 provides some elements on the infractions triggering disciplinary measures, detailed guidance needs to be provided to judges on the types of infractions that will give rise to disciplinary measures. Judges of the Qatar International Court and the QFC Regulatory Tribunal have their own Judicial Code of Conduct based on the principles of independence, impartiality, integrity and propriety.

D. Fair trial, due process guarantees and administration of justice

53. The Special Rapporteur was seriously concerned by the allegations of violations of due process and fair trial guarantees described to her during her visit, the consequences such violations have on people's lives and the respect for their human rights. Complaints of violations of due process and fair trial need to be investigated immediately and seriously by the relevant authorities and urgent measures taken to redress the situations. Such measures of redress may include the revision of judgements and sentences and/or the granting of compensations. In this context, the Special Rapporteur would like to bring to the attention of the Qatari authorities the following cases which, in her opinion, were tarnished by a series of serious violations of the right to a fair trial and/or serious breaches of due process: the case of Juan Pablo Irragori Médina; the case of Matthew and Grace Huang; the "Villagio-fire" case; and the case of Malika Alouane, Mahmoud Bouneb and Haytham Qudaih.

1. Arbitrary arrest and pretrial detention

54. According to the Code of Criminal Procedure, persons who are arrested must be presented to the prosecutor within 24 hours; the prosecutor in turn has 24 hours to order the remand or release of the person. Prosecutors can order pretrial detention for up to eight days. After that period, the detention can only be prolonged by court order. No limit is provided to pretrial detention, except that it "must not exceed half of the maximum penalty established for the offence", which could result extremely problematic in cases of long sentences.

55. The Special Rapporteur is further alarmed that the guarantees provided by the Code of Criminal Procedures against arbitrary arrest and detention do not apply to persons arrested under Law No. 17 of 2002 on the Protection of the Community,[3] Law No. 3 of 2004 on Combating Terrorism[4] and Law No. 5 of 2003 establishing the State Security Service.[5] Under these laws, persons can be detained for lengthy periods of time without charge and fundamental safeguards, including access to a lawyer or the possibility to challenge the legality of the detention before a judge.

56. Anyone arrested without a warrant and/or detained beyond the period provided for in the law without having been presented to a judge should be released. The powers extended to the Minister of the Interior under the Law on the Protection of the Community

[3] Law No. 17 of 2002 allows the Minister of Interior to order the provisional detention of anyone suspected of crimes involving State security, honour, decency or public morals for up to one year, with possibility of extension upon consent of the Prime Minister. The detention can only be appealed before the Prime Minister.

[4] Law No. 3 of 2004 on Combating Terrorism entitles the prosecutor to order pretrial detention of a person suspected of a crime covered by the law for up to six months without judicial review.

[5] Under Law No. 5 of 2003, persons accused of a crime falling under the purview of the State Security Service can be detained for up to 30 days by the Service before being presented to a prosecutor.

also constitute a serious interference of the executive branch in the prerogatives of the prosecution and the judiciary. In addition, the crimes falling under the purview of these three laws are vaguely defined, which is in contradiction with the principle of legality.

2. Transparency and access to information

57. The apparent lack of transparency during both the investigation phase and court proceedings remains a matter of great concern for the Special Rapporteur. Many interlocutors reported that it was extremely difficult to know what happens in the courts, whether you were a defendant or a victim. It was also reported to the Special Rapporteur that some hearings were held in camera without justifications based on exceptional circumstances. When hearings are held in closed sessions without proper justification, in contradiction to the right to a fair and public hearing, the fairness of the entire judicial process can be put at risk. Closed hearings also contribute to the public's lack of confidence in the courts.

58. The lack of technology used during some court hearings contributes to the lack of transparency of court hearings. Court minutes are reportedly still hand written, which more than often causes serious inaccuracies. Such practices disservice justice and open the door to further manipulation. For instance, it was reported to the Special Rapporteur that the minutes of a high-level case where the hearings were held in camera did not accurately reflect that the sessions were indeed closed. In another case, the defendant did not receive all the transcripts of the hearings. As a result, the content of the missing hearings were not taken into account in the appeal process to the detriment of the defendant and of the fair exercise of justice.

59. In some instances, lawyers also seem to be confronted with serious difficulties in gaining access to information, in particular during the investigation phase of criminal cases. Lawyers' full access to appropriate information, files and documents in the possession or control of the authorities has to be guaranteed in practice. Such access should be already accorded at the investigative stage in order to allow for the preparation of an adequate defence in conformity with the principle of equality of arms. Appropriate information includes all materials that are exculpatory or that the prosecution plans to offer in court against the accused.

60. The Special Rapporteur was disturbed to hear that, in the so-called and infamous "Villagio" case, where 19 persons, including 13 children, many of them foreigners, perished in a fire in a shopping mall, the report of the independent expert investigation carried out to establish the facts was never communicated in its entirety to the parties. In another case, the defendants, former employees of a television network, did not have access to any information during the investigation phase and were only informed of the charges pending against them at the third court hearing. It was therefore impossible for them to prepare their defence in adequate conditions, in contradiction with the principle of equality of arms.

3. Translation and interpretation

61. The Special Rapporteur is particularly concerned about reports that translations and interpretation in court cases involving non-Arabic speakers, while prescribed by the law, are not always provided in practice or that their quality is poor. She was alarmed to hear of several cases where non-Arabic speaking defendants were forced to sign documents in Arabic without being provided with a translation. These documents were later used against them in court, and in one of the cases the document turned out to be a confession of guilt. Several cases where the defendants were not provided with interpretation during court hearings were also reported to the Special Rapporteur. Such obvious violations of due process are unacceptable; moreover, any document or testimony given in the absence of

translation or interpretation should have no legal validity. The Special Rapporteur notes with appreciation that the Ministry of Justice prepared a draft law aiming at strengthening the capacity and quality of translation services, including with regards to court matters.

4. Delays in proceedings

62. Another concern related to due process guarantees are delays in judicial proceedings often caused by the postponement of hearings without clear and fair justification. For instance, the appeal hearings in the Villagio case keep being postponed because the defendants, sentenced to jail in first instance and under a travel ban, do not show up to court when summoned. Such endless postponements are unacceptable. In one instance, the absence of one of the defendants was justified by his travelling despite the travel ban against him. Such disregard for a judicial decision is also a source of great concern to the Special Rapporteur. The result of the lack of due process followed in this case is to deny victims their right to an effective remedy. It also robs them of the possibility to come to closure with their loss.

63. Delays in court procedures can also have particular dire consequences on migrant workers, who are in a particular vulnerable situation. Lengthy procedures in labour cases more than often will leave migrant workers living in inhuman conditions. The Special Rapporteur was told that, since judges are often not sensitized to the particular situation of migrant workers and their plight, the consequences of postponing or prolonging trials may not be taken into account.

E. Access to justice and the situation of migrant workers

64. The Special Rapporteur is particularly concerned about access to justice of vulnerable sectors of the population, such as migrant workers in the construction industry or domestic workers, for whom obstacles to access justice in cases where their rights have been violated seem to be almost insurmountable. In this context, it is important to note that a system of sponsorship (or *Kafala*) is used in Qatar to regulate the relationship between migrants and their employers. According to the Special Rapporteur on the human rights of migrants, such system "enables unscrupulous employers to exploit employees".[6]

65. Institutionalized legal aid is only available in criminal cases when the defendant does not have the financial means to pay for a lawyer. The budget comes directly from the courts' budget. Private actors, such as charity organizations, provide legal counselling, but it is insufficient. The National Human Rights Committee also provides assistance to migrant workers free of charge and, when necessary, can put them in contact with lawyers. The Special Rapporteur notes with appreciation that a special office for labour disputes created within the Ministry of Labour also provides information and quasi-legal support to migrant workers free of charge.

66. Migrant workers, including domestic workers, face a series of serious obstacles to access justice. Despite genuine and laudable efforts of both the authorities and the National Human Rights Committee, the majority of migrant workers do not know how or where to file a complaint. Language is also a barrier to getting adequate information and registering a complaint. Migrant workers also very frequently fear the police, institutions and retaliation from their employers.

67. Most importantly, migrant workers are unable to support themselves without an income through the court process, which at best means they were suspended from their job.

[6] See A/HRC/26/35/Add.1.

While a transfer of sponsorship to allow them to work for another employer is possible in theory, such transfers are very rarely accepted in practice. Under the sponsorship system, migrant workers cannot leave the country without the approval of their employer.

68. Finally, in the rare cases where migrant workers reach the courts, they have to pay both court fees and expert fees. Court fees are requested to register a complaint, although in labour cases migrant workers should be exempted. Expert fees have to be paid by the complainant to obtain the expert financial report that is necessary to prove their case and take it further in the judicial process. Expert fees can be as high as 600 Riyals (approximately $165). Even in cases where the complaint is the same against the same employer, each complainant has to pay the expert fees, which prevents migrant workers from pooling money to present their cases collectively. Expert fees can reportedly be waived, but it is rarely done in practice. Yet, one of the major grounds for complaints is the non-payment of salaries. Courts need to be made aware of the plight of migrant workers and the burden that these fees represent for them.

69. The Special Rapporteur is also concerned about the administrative detention of migrant workers. According to the sponsorship law, the detention of migrant workers awaiting deportation can be ordered for up to 30 days, renewable. Lengthy periods of administrative detention before deportation seem unnecessary to the Special Rapporteur and may amount to inhuman treatment; she wishes to note that the right not to be arbitrarily detained also applies to migrant workers. In the case that migrant workers are detained under criminal charges, all the safeguards against arbitrary detention should apply to them.

70. The Special Rapporteur welcomes the announcements in May, July and November 2014 according to which reforms to improve the situation of migrant workers and replace the *Kafala* with a system of contract between worker and employer would be announced in early 2015. In addition to improving the working and living conditions of migrant workers in Qatar, she hopes that the future reforms will also contribute to facilitating migrant workers' access to justice.

F. Women in the justice system

71. During her visit, the Special Rapporteur paid attention to the integration of a gender perspective and women's rights in the justice system. She is concerned about the poor representation of women on the bench. According to numbers received, out of a total of 198 judges, only 2 are women (1 in the family circuit and 1 in the civil circuit) and 1 female assistant judge out of 14. The Special Rapporteur was nevertheless encouraged to hear that professors were encouraging more female law students to pursue a judicial career and that more women were presenting their candidacies to become judges.

72. It seems that women, however, are still faced with institutionalized gender discrimination at many stages of the justice system, including when filing complaints with the police or appearing before the courts. Both the composition and behaviour of the judiciary and prosecution services seem to reflect the traditional and patriarchal societal structure of the country. Gender biases and discriminatory attitudes and practices against women are reproduced within the judiciary and the administration of justice.

73. In this context, the Special Rapporteur is concerned that domestic and sexual violence against women, in particular against female migrant domestic workers, is still prevalent in Qatar.[7] Women are subjected to strong social and institutional pressure and stigma when trying to report cases of domestic and sexual violence. Such pressure and

[7] See CAT/C/QAT/CO/2, para. 19, and CEDAW/C/QAT/CO/1, para. 23.

stigmatizing attitudes often prevent them from denouncing the violations they have suffered, thereby representing a major obstacle to access justice. Migrant domestic workers whose rights have been violated are in an extremely vulnerable position, as they have to face compounded discrimination on the basis of their gender and their migrant status. The Special Rapporteur regrets the lack of statistical data on the number of complaints, investigations, prosecutions and convictions in cases of violence against women.

74. The Special Rapporteur firmly believes that a more representative and gender-sensitive judiciary can play a determining role in empowering women to gain access to justice, claim their human rights and break patterns of discrimination and impunity for cases of violence against women.

G. Prosecution services

75. The public prosecution was established as an independent judicial body by Law No. 10 of 2002; it is headed by an Attorney-General, appointed by the Emir, and composed of prosecutors of different ranks appointed by the Emir upon recommendation of the Attorney-General. Prosecutors' security of tenure is guaranteed until the mandatory retirement set forth by the law (70 years old). The Special Rapporteur is nevertheless troubled by article 44(5) of Law No. 10 of 2002, according to which the Emir has competence to dismiss prosecutors "for reasons of public interest". In her view, such ground for dismissal is vague and does not comply with international standards regarding disciplinary measures against prosecutors.

76. The Special Rapporteur was concerned to receive information according to which the prosecution services were influenced by high-level persons or powerful businesses. For this reason, a clear distinction must be drawn between public and State interests. Acting on behalf of the public interest should not be confused with protecting the interests of the Government or any other State institution.

77. The Special Rapporteur was also particularly concerned to hear allegations about the complicity of prosecution services in the fabrication of facts or tempering of evidence in certain cases. The prosecution office also seems to have complete discretion when it comes to the cases it takes up or not. This has led to irrational instances where the prosecution was pursued even when the evidence pointed to the fact that no crime had been committed. The Special Rapporteur is further troubled by the reported lack of judicial oversight of the work of prosecutors. Judicial oversight is important to ensure the legality of the actions of the prosecution, whether during the investigative or trial phases. Finally, the Special Rapporteur must underline the absence of clear guidelines of procedure and of a written code of conduct or ethics as a serious deficit, which may jeopardize the impartiality and independence of prosecutors, as well as the quality and consistency of their work.

H. Lawyers

78. Like judges and prosecutors, lawyers also play an essential role in ensuring the independence of the judiciary and upholding the rule of law and, while they are not expected to be impartial in the same way as judges, they must be free from external pressures and interference. The Special Rapporteur is concerned about the absence of an independent self-regulating bar association that oversees the process of admitting candidates to the legal profession, provides for a uniform code of ethics and conduct and

enforces disciplinary measures, including disbarment.[8] The establishment of such an organized legal profession is a key element to the independence of lawyers.

79. The conditions of admission to the bar are set out in article 23 of Law No. 23 and include six months of compulsory training at the Centre for Judicial and Legal Studies and 18 months of training at a law firm. While at the time of the visit no uniform written bar examination was in place, the Special Rapporteur welcomes the establishment at the end of 2014 of such an examination, which she hopes will contribute to addressing the current unequal competence between lawyers.

80. The Lawyers' Admission Committee established in the Ministry of Justice is in charge of the admission of lawyers and their registration in one of the rolls set forth by the law.[9] Its decisions can be appealed before the Court of Appeal. While she acknowledges the presence of three lawyers in the Committee, the Special Rapporteur is concerned about the extensive involvement of the executive in the admission and registration of lawyers, which, in her view, is incompatible with the Basic Principles on the Role of Lawyers as it undermines lawyers' independence. She also notes with concerns that an application of enrolment renewal has to be submitted by practicing lawyers every year. The Special Rapporteur notes with appreciation that a draft law was prepared by the Ministry of Justice to modify the composition of the Committee and hopes to receive more information on its content.

81. In the same vein, the Special Rapporteur is concerned about the implication of the executive branch in disciplinary procedures against and the disbarment of lawyers. Indeed, the Department of Legal Advice and Contracts at the Ministry of Justice receives and investigates disciplinary complaints against lawyers. If evidence of misbehaviour is found, the Department presents a disciplinary claim before the Disciplinary Board,[10] which will consider the case and make a decision. Decisions can be challenged before the Court of Appeal. Lawyers' rights and duties are listed in Law No. 23 of 2006, but at the time of the visit there was no comprehensive code of conduct or ethics that clearly defines what constitutes an infraction and how such infractions are sanctioned. The Special Rapporteur welcomes information according to which the association of lawyers is preparing a draft code of conduct to present to the Admission Committee.

82. The Special Rapporteur was further concerned to hear about the difficulties that lawyers have had in discharging their professional functions, in particular regarding access to information, including expert reports and other essential documents, and the case file of their client during both investigation and trial phases. The Special Rapporteur also heard reports of lawyers being arbitrarily banned from entering court hearings where they were to represent a client or arbitrarily replaced by another lawyer upon order of the court and against the will of their client. She is also worried that some Qatari lawyers were reported to behave in a discriminatory way in front of non-Qatari judges, without being sanctioned.

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[8] There is an association of lawyers but it has no official competence.

[9] The Lawyers' Admission Committee is composed of three representatives of the Ministry of Justice (including the Minister himself), two judges from the Court of Appeal, a public prosecutor and three lawyers elected by the Minister of Justice.

[10] The Disciplinary Board is composed of one judge from the Court of Appeal, two judges selected by the President of the Court of Cassation, one jurist from the Ministry of Justice and one lawyer admitted before the Court of Cassation.

I. Education, training and capacity-building

83. All stakeholders met during the visit were unanimous in recognizing the importance of high-quality education and professional training for judges, prosecutors and lawyers in order to ensure an independent, impartial and effective administration of justice; they also acknowledged the current deficits of Qatar in this domain and the efforts of the authorities in pursuing avenues to remedy the situation. The lack of continuing or on-the-job training was also underlined.

84. The Special Rapporteur was informed of the urgent need to further strengthen training in international law, in particular human rights law and the conventions and treaties ratified by Qatar. In one particular case, a lawyer made references to the Convention on the Rights of the Child in his pleadings, which were ignored by the judge, who had never heard of the Convention.

85. Qatar has a faculty of law and a faculty of sharia. There are also campuses of several international universities, and the authorities have set up study programmes in European and American universities to stimulate enrolment in legal studies. For instance, the Special Rapporteur was told that staff members of the Ministry of Justice are encouraged and offered specific opportunities to study abroad. There is also the Centre for Legal and Judicial Studies, which was established by Law No. 8 of 2001 (amended) as a separate legal entity under the authority of the Ministry of Justice to provide training for judges, prosecutors, legal assistants, law enforcement officers and lawyers. The National Human Rights Committee has also provided specific training to future judges and prosecutors, and that practice should be further encouraged.

86. The authorities seem particularly aware that efforts are urgently needed to continue to build education and training capacities in Qatar in order to improve the expertise of judges, prosecutors and lawyers and the quality of their work. In this context, the Special Rapporteur welcomes innovative initiatives like the "Development of Professional Legal and Judicial Education in Qatar", led by the Qatar International Court and Dispute Resolution Centre. This initiative aims at establishing an International Judicial and Legal Education Institute in Qatar, thereby creating a system of professional legal and judicial education that works to international standards and is tailor-made for the development of Qatari judges, prosecutors and lawyers.

IV. Conclusions

87. **Qatar has come a long way in a short time in terms of developing its justice system. The country's recent dramatic population growth has put pressure on its institutions, which will need to adapt and promote reforms in order to be able to deal with the challenges that will continue to arise with the influx of foreigners and the country's tremendous ongoing economic development.**

88. **The Special Rapporteur commends the recognition of the principle of separation of powers and the independence of the judiciary in the Constitution. The acknowledgement of these principles, which are essential to the rule of law, was indispensable to provide for a healthy foundation upon which to build a new judicial system in line with the international principles of independence and impartiality and guarantees of due process and fair trial. The unification of the courts under Law No. 10 of 2003 also constituted a welcome development that largely contributed to consolidating the administration of justice in Qatar.**

89. **In spite of such progress, the Special Rapporteur is concerned that the challenges and shortcomings she identified in the present report negatively affect the**

independence and impartiality of the justice system, as well as the enjoyment of human rights in Qatar. Some of the cases mentioned in the report as way of examples are seriously worrying; they tarnish the genuine efforts undertaken by many to set up a justice system that is independent, impartial and competent in Qatar. Cases should be given all the attention they deserve, and violations of due process remedied as soon as possible to provide for positive examples and guide the improvements needed. If left unaddressed, these challenges and shortcomings will also undermine positive reform efforts.

90. The authorities have assured the Special Rapporteur of their determination to improve the system where needed. Qatar shows great potential in this sense as, unlike many other countries, Qatar has the financial means to support reforms and implement a wide range of measures. Ten years after the adoption of the Permanent Constitution, Qatar should not miss the opportunity to launch the reforms necessary to reinforce its institutions, in particular those related to the justice system. Against this background, the Special Rapporteur strongly encourages Qatar to continue to engage with all human rights mechanisms and to spare no efforts in implementing their recommendations.

V. Recommendations

91. The International Covenant on Civil and Political Rights and its Optional Protocols should be ratified.

92. The Supreme Constitutional Court should be formed and be provided with all the resources and guarantees necessary for its full independence and proper administration so as to become operational as soon as possible.

93. Free and fair elections to the Advisory Council should be held in conformity with the provisions of the Constitution of Qatar; women should be encouraged to run.

94. Limitations to the competence of the courts, including regarding nationality-related issues, should be removed as the courts should have jurisdiction over all issues of a judicial nature.

Independence and impartiality of the judiciary

95. Measures should be taken to guarantee the independence of the judiciary. In particular, alleged cases of improper influences, pressures, threats and interferences, direct or indirect, should be promptly investigated and, if confirmed, perpetrators should be held accountable.

96. The appointment mechanism should be reviewed to limit the involvement of the executive.

97. Clear, objective and transparent criteria should be applied in the selection of judges, so as to ensure that such selection be based on merit only.

98. Article 63(5) of Law 10 of 2003 should be amended. All disciplinary measures taken against judges should be in line with international standards.

99. Complaints related to discriminatory attitudes and other improper behaviour of the judiciary should be promptly investigated and, if necessary, appropriate measures should be taken.

Non-national judges

100. Non-Qatari judges should be provided with all the guarantees given to national judges, as long as these are in line with the rules of secondment of their home country. Their contracts should not have to be renewed annually, but rather they should last for the whole duration of the secondment allowed by the home country.

101. A transparent and clear strategy, accompanied by a sufficiently resourced programme, should be adopted to progressively reduce the number of non-Qatari judges in full conformity with international human rights obligations; in the longer term, the goal should be to fully nationalize membership of the judiciary.

102. Lawyers, prosecutors and other stakeholders should show the same level of respect to non-Qatari judges as shown to national judges.

Accountability and disciplinary measures

103. A written code of conduct or ethics for judges should be adopted in line with the Bangalore Principles of Judicial Conduct.

Fair trial, due process and administration of justice

104. The Code of Criminal Procedure should be amended to prescribe a limit for pretrial detentions. The authorities should take measures to ensure that all due process safeguards are provided in practice to all detainees.

105. The Laws on the Protection of the Community, on Combating Terrorism and establishing the State Security Service should be amended in line with international and domestic safeguards against arbitrary arrest and detention. Activities prohibited by these laws should be clearly defined.

106. The uniformity of court procedures should be ensured, in particular with regard to public hearings.

107. Judicial decisions and judgements should be published and available to the public.

108. Modern technology tools should be adopted urgently and all hearings should be recorded to ensure the proper, adequate and transparent administration of justice. Video streaming should also be available to enable victims who are abroad to follow judicial proceedings effectively.

109. Safeguards should be established to ensure that lawyers can represent and defend their clients appropriately in full respect of the principle of equality of arms. Access to information during investigation and trial should be ensured.

110. Quality interpretation and translation for non-Arabic speakers should be provided at all stages of judicial proceedings, including during the investigation phase.

111. Urgent measures should be taken to prevent delays in court proceedings. In particular, the postponement of hearings should be avoided and justified on reasonable grounds. The particular situation of vulnerable sectors of the population, such as migrant workers, should also be taken into account.

Access to justice and the situation of migrant workers

112. Urgent measures should be taken to lift both court and expert fees for all migrant workers and other vulnerable sectors of the population. Access to legal aid and interpreters should also be guaranteed.

113. The administrative detention of migrant workers should be subjected to judicial review.

114. Policies, procedures and practices to promote equal access to justice for all, in particular vulnerable groups, such as migrant and domestic workers, should be developed and implemented.

Women in the justice system

115. Gender-based bias, stereotypes and discrimination persisting in the justice system should be addressed and eliminated urgently. To that end, training on gender equality and women's rights, including violence against women, and related international human rights standards, in particular the Convention on the Elimination of All Forms of Discrimination against Women, should be set up and made compulsory for judges, prosecutors and lawyers. The study of gender equality, women's rights and relevant international standards should also form an integral part of the legal education.

116. Measures to improve the representation of women in the judiciary should be taken. Women should be encouraged to undertake legal studies and consider legal and judicial careers. A clear policy to this intent should be adopted.

117. Gender-tailored procedures, policies and practices to promote women's equal access to justice should be developed.

118. Disaggregated statistical data on the number of complaints, investigations, prosecution and convictions in cases of violence against women should be compiled.

Prosecution services

119. Prosecutors should conduct themselves in a professional manner at all times and strive to be, and be seen to be, independent and impartial. They should perform their duties fairly and respect and protect human dignity and uphold human rights; they should not be subjected to improper interference.

120. A written code of ethics for prosecutors should be established and compliance with its provisions should be monitored and taken into account. Clear guidelines with objective criteria for ordering investigations and prosecuting cases should also be established by the office of the Attorney-General.

121. Judicial oversight of prosecutors' actions should be instituted.

122. Article 44(5) of Law No. 10 of 2002 should be amended. All disciplinary measures taken against prosecutors should be in line with international standards.

Lawyers

123. An independent self-regulating bar association with statutes that comply with international standards should be established, inter alia, to oversee the process of

admitting candidates to the bar and enforce disciplinary measures, including disbarment. The official status of the association should be recognized. Law No. 12 of 2004 on freedom of association should in no way represent an obstacle to establish this association.

124. **The draft code of conduct prepared by the association of lawyers should provide for the applicable disciplinary procedure and give detailed guidance on the infractions that would trigger disciplinary measures against lawyers, in line with international standards.**

125. **An impartial disciplining body should be established by the legal profession and a pre-established procedure should be adopted for the conduct of disciplinary proceedings in line with international standards.**

Education, training and capacity-building

126. **Access to high-quality education and professional training, including on-the-job and specialized training, for judges, prosecutors and lawyers should be fostered. Training in human rights law should be reinforced.**

127. **The capacities of the Centre for Legal and Judicial Studies should continue to be strengthened and the range of professional and on-the-job training should be expanded.**

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Addendum

Mission to the United Arab Emirates*

Summary

The Special Rapporteur on the independence of judges and lawyers conducted an official visit to the United Arab Emirates from 27 January to 5 February 2014. The purpose of the visit was to examine both the achievements made and challenges faced in the country in ensuring the independence of the judiciary and the free exercise of the legal profession.

During her visit, the Special Rapporteur met with a number of senior government officials at the Federal Ministries of Justice, the Interior, and Foreign Affairs, and the Abu Dhabi Judicial Department, as well as the Chief Justice of the Federal Supreme Court, federal and local judges, the Attorney General, and members of the federal and local public prosecution offices. She also met with lawyers and members of the diplomatic community and civil society.

The Special Rapporteur starts her report with an overview of the federal justice system and its constitutional and legal frameworks. In the second part of the report, she presents her findings and concerns, focusing on the following topics: (a) legal uncertainty; (b) the independence and impartiality of the judiciary; (c) non-national judges; (d) accountability and disciplinary measures; (e) fair trial, due process and administration of justice; (f) access to justice and legal aid; (g) women in the justice system; (h) prosecution services; (i) lawyers; and (j) education, training and capacity-building.

* The summary of the present report is circulated in all official languages. The report itself, contained in the annex to the summary, is circulated in the language of submission and in Arabic only.

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The Special Rapporteur acknowledges that the justice system in the United Arab Emirates has developed into an elaborate and complex court system in a relatively short time frame. Despite commendable progress and achievements, the Special Rapporteur is concerned that the challenges and shortcomings she has identified are serious and negatively affect the delivery of justice, the enjoyment of human rights and the public's confidence in the judiciary. The report concludes with recommendations to all relevant stakeholders.

Annex

[Arabic and English only]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to the United Arab Emirates

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I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, visited the United Arab Emirates from 28 January to 5 February 2014 at the invitation of the Federal Government. The purpose of the visit was to examine, in a spirit of co-operation and dialogue, both the achievements and the shortcomings of the United Arab Emirates in ensuring the independence of the judiciary and the free exercise of the legal profession.

2. The Special Rapporteur visited Abu Dhabi, Dubai and Sharjah and met with the Minister of Justice and a number of senior government officials at the Federal Ministries of Justice, the Interior, and Foreign Affairs, as well as officials at the Abu Dhabi Judicial Department. She also met with the Chief Justice of the Federal Supreme Court and federal judges, judges from the local judicial authorities of Abu Dhabi and Dubai, the Federal Attorney General and members of the federal public prosecution, members of the public prosecution offices of Abu Dhabi and Dubai, representatives of the Dubai Judicial Institute and the Institute of Training and Judicial Studies in Sharjah, and lawyers. In addition, she met with members of the diplomatic community and civil society.

3. The Special Rapporteur wishes to thank the Government of the United Arab Emirates for its engagement with her mandate. She notes that, as the United Arab Emirates is a member of the Human Rights Council, the State's cooperation with the special procedures is essential to set a positive example. She also thanks all those who dedicated their time to sharing their expertise and opinions with her.

4. The Special Rapporteur underlines the fact that, by inviting her to conduct an official visit, the Government agreed to the terms of reference of such visits, which include a guarantee that no person who has been in contact with her in relation to the visit will suffer threats, harassment, punishment or other reprisals, or be subjected to judicial proceedings based on their contact with her.

II. Justice system

5. The United Arab Emirates is a federal State that was formed in December 1971 when the British protectorate over the various sheikhdoms in the region ended. It comprises seven Emirates — Abu Dhabi, Ajman, Dubai, Fujairah, Ras al-Khaimah, Sharjah and Umm al-Quwain — that exercise sovereignty over their own territories in all matters that do not fall within the jurisdiction of the Federation.

A. Constitutional provisions

6. The Constitution of the United Arab Emirates was adopted on 18 July 1971 and entered into force on 2 December of the same year. The Constitution was temporary until constitutional amendment No. 1 of 1996 made it permanent. It does not expressly recognize the separation of powers.

7. Judicial authority is regulated by part four, chapter V, of the Constitution, which includes provisions recognizing the independence of judges (art. 94), establishing a Federal Supreme Court and Federal Primary Tribunals (art. 95) and their jurisdictions (arts. 99 and 102, respectively), and stipulating the composition of the Federal Supreme Court and the appointment of its judges (art. 96), as well as their irremovability from office (art. 97). Chapter V also clarifies the jurisdiction of the local judicial authorities in the Emirates and provides for the possibility of transferring all or part of their jurisdiction to the Federal

Primary Tribunals through the enactment of specific legislation (arts. 104 and 105). Chapter V establishes an Attorney General and the federal public prosecution (art. 106).

8. In addition, part three of the Constitution guarantees a selected list of fundamental rights and freedoms.

B. Legal framework

9. The legal system in the United Arab Emirates is based on both civil law and sharia (Islamic law) provisions. Sharia is recognized in the Constitution to be the main source of legislation. Judges are bound to apply "provisions of the Islamic sharia, the federal laws and the other laws in force in the Emirates".[1]

10. Along with the relevant constitutional provisions, the federal judiciary is mainly regulated by Federal Law No. 10 of 1973 "Concerning the Supreme Federal Court" (as amended); Federal Law No. 6 of 1978 "On the establishment of Federal Courts and transferral of the jurisdiction of the local judicial authorities in some Emirates to them" (as amended); and Federal Law No. 3 of 1983 "Concerning the Federal Judicial Corps" (as amended).

11. Federal Law No. 10 of 1973 sets out the organization of the Federal Supreme Court, its composition and jurisdiction, and establishes a constitutional chamber. It also sets out the recruitment conditions, appointment, tenure and retirement age of the judges; the role of the president; and the accountability of judges, as well as disciplinary procedures and sanctions. It regulates the composition, hierarchy and jurisdiction of the federal public prosecution; the recruitment conditions, appointment, transfer and retirement age of prosecutors; and the rules of procedure of the Supreme Court.

12. Federal Law No. 6 of 1978 created the Federal Courts of First Instance and Appeal and transferred the jurisdiction of existing local judicial authorities in the Emirates of Ajman, Fujairah, Sharjah and Umm al-Quwain to those Federal Courts. The law defines the competence and jurisdiction of Federal First Instance Courts in criminal, civil, commercial, personal status and administrative matters. It also establishes the supervision of the Federal Courts by the Minister of Justice.

13. Federal Law No. 3 of 1983 sets out, inter alia, the court structure; the composition of Federal Courts of First instance and Appeal; the composition and competence of the Supreme Council of the Federal Judiciary; the recruitment conditions, appointment, promotion, transfer, tenure and retirement age of judges; and the independence, duties and accountability of judges, as well as disciplinary procedures and sanctions. It also regulates the federal public prosecution, established as a body under the direct supervision and control of the Minister of Justice. It determines the composition and hierarchy of the public prosecution; the recruitment conditions, appointment, promotion, tenure and retirement age of prosecutors; and the duties and accountability of prosecutors, as well as disciplinary procedures and sanctions. It creates a Judicial Inspection Department in the Ministry of Justice to probe the work of judges of the Federal Courts of First Instance and Appeal and of the members of the public prosecution.

14. The rights and duties of lawyers are defined in Federal Law No. 23 of 1991 "Regarding the regulation of the legal profession" (as amended), which also governs the conditions for admission and registration as a practising lawyer, and disciplinary

[1] Federal Law No. 10 of 1973, article 75, see also Federal Law No. 3 of 1983, article 1.

proceedings and sanctions against lawyers. The law also establishes a seven-member Council for the Admission of Lawyers before the Courts.

15. The legal framework also includes the Penal Code (Federal Law No. 3 of 1987, as amended) and the Civil Code (Federal Law No. 5 of 1985, as amended); the Code of Criminal Procedure (Federal Law No. 35 of 1992, as amended) and the Code of Civil Procedure (Federal Law No. 11 of 1992, as amended); Federal Law No. 17 of 1978 "On the regulation of the instances and procedures of appeal in cassation before the Federal Supreme Court"; and a series of federal laws establishing Federal Courts of First Instance and Appeal in Emirates and cities other than the capital city, Abu Dhabi.

16. At the international level, the United Arab Emirates is a State party to several human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. At the regional level, the United Arab Emirates ratified the Arab Charter on Human Rights in 2008. The Charter contains a comprehensive set of binding provisions relevant to the mandate of the Special Rapporteur.

C. Court structure

18. Prior to the formation of the United Arab Emirates, each of the seven Emirates had its own local judicial system. The Constitution of the United Arab Emirates provided for the establishment of a Federal Supreme Court with exclusive jurisdiction over a specific list of judicial matters in all the Emirates. For all other judicial matters, the Constitution allows the Emirates to keep their local judicial authorities or to join the federal judicial system. The Emirates of Abu Dhabi, Dubai and Ras al-Khaimah have kept and developed their own local judicial authorities, which are now organized in three-tier systems (first instance, appeal and cassation) and function independently from the federal system. That means that in those three Emirates, there are two justice systems functioning in parallel: the local justice system has jurisdiction over all judicial matters that do not belong to the exclusive competence of the Federal Supreme Court. The judgements of the local courts of cassation are final, except when the constitutionality of a law or its application is appealed to the Federal Supreme Court.

1. Federal Supreme Court

19. The Federal Supreme Court was established by the Constitution and is regulated by Federal Law No. 10 of 1973. It is the highest court of the federal justice system and is located in Abu Dhabi. The Court has exclusive jurisdiction over a series of matters, including disputes between the various Emirates or with the Federal Government; the constitutionality of federal and local legislation and regulations; the interpretation of the Constitution and international treaties; offences directly affecting the interests of the federation, in particular crimes related to internal and external security; and conflicts of jurisdictions. In addition, the Court has the competence to review appeals against rulings rendered by the Federal Courts of Appeal, in accordance with the provisions of Federal Law No. 17 of 1978. The Court comprises various circuits or chambers, including a constitutional chamber and a State security chamber.

20. The Supreme Court is composed of a president and four judges, as well as a sufficient number of alternate judges, appointed by decree of the President of the United Arab Emirates after approval by the Cabinet of Ministers and ratification by the Federal

Supreme Council, which is composed of the rulers of the seven Emirates.[2] The Supreme Court has a general assembly, composed of all its judges and chaired by its president, to deal with the constitution of chambers, the distribution of tasks and other administrative and internal affairs of the Supreme Court. It also has a technical bureau, composed of judges, members of the public prosecution and the Division of Fatwa, Legislation and Government Litigation of the Ministry of Justice, and other legal experts, to supervise the transcription and printing of the Supreme Court's judgements, extract the legal rules from those judgements, carry out legal research required by the Supreme Court and perform other technical functions.

2. Federal Courts of Appeal

21. Federal Courts of Appeal were established by Federal Law No. 6 of 1978 and are located in Abu Dhabi, as well as in other Emirates when a federal law establishes them.[3] Those Courts are further regulated by Federal Law No. 3 of 1983 and comprise different circuits or chambers to hear appeals in criminal, civil, commercial, personal status and administrative matters lodged against judgements of the Federal Courts of First Instance. Except in a number of cases defined by law, their rulings are final and cannot be appealed to the Federal Supreme Court.

22. Courts of Appeal consist of a president and a sufficient number of judges, appointed by decree of the President of the United Arab Emirates upon the proposal of the Minister of Justice, and supervised by the Minister of Justice.

3. Federal Courts of First Instance

23. Federal Courts of First Instance were also established by Federal Law No. 6 of 1978 and are located in Abu Dhabi, as well as in other Emirates when a federal law creates them.[4] Like the Courts of Appeal, they are governed by Federal Law No. 3 of 1983 and comprise different circuits or chambers to hear criminal, civil, commercial, personal status and administrative matters.

24. Courts of First Instance are composed of a president and a sufficient number of judges, appointed by decree of the President of the United Arab Emirates upon the proposal of the Minister of Justice, and supervised by the Minister of Justice.

4. Supreme Council of the Federal Judiciary

25. The Supreme Council of the Federal Judiciary was established by Federal Law No. 3 of 1983 to achieve the independence of the judiciary. Its competence includes expressing its opinion on issues related to the judiciary and the public prosecution; studying and proposing legislation related to the development of the justice system; and expressing its opinion on the promotion, secondment and delegation of judges and members of the public prosecution. The Council can also exercise any other function prescribed to it in accordance with the law.

26. The Supreme Council is composed of seven members (only three of whom are judges): the Minister of Justice (chairman); the Under-Secretary of Justice; the President of

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[2] There are currently 20 judges in total.

[3] There are Federal Courts of Appeal in the Emirates of Abu Dhabi, Ajman, Fujairah, Sharjah and Umm al-Quwain.

[4] There are Federal First Instance Courts in the Emirates of Abu Dhabi, Ajman, Fujairah, Sharjah and Umm al-Quwain.

the Federal Supreme Court; the Attorney General; the Director of the Judicial Inspection Department; and the two oldest serving presidents of the Federal Courts of Appeal.

III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

27. Despite the remarkable progress and modernization that has been achieved in a limited time frame, the federal justice system of the United Arab Emirates still faces serious challenges that directly affect the delivery of justice and the realization of human rights. The independence and impartiality of the judiciary and the transparency and efficiency of the administration of justice can vary between the different Emirates and between the different local justice systems and the federal system.

A. Legal uncertainty

28. The federal system of the United Arab Emirates is complex and can be difficult to understand, in particular for non-nationals, who constitute the majority of the population. During her visit, the Special Rapporteur was told that, because of the complex superposition of federal and local laws, it is sometimes difficult for the public to know where the boundaries lie between the federal and local justice systems. There also appears to be a lack of consistency in the application of federal laws across the different Emirates. The Special Rapporteur is concerned about reports that it is difficult for people to know which legal provisions are applicable to them, depending on where they are in the Federation, and that laws are sometimes applied in an arbitrary manner. That creates ambiguity and mistrust towards both law enforcement authorities and the justice system.

29. Furthermore, it was pointed out to the Special Rapporteur that important pieces of legislation, including Federal Law No. 2 of 2003 (as amended by Federal Decree No. 1 of 2011) "On the State security apparatus", Federal Decree No. 5 of 2012 "On combating Cybercrimes" and Federal Law No. 7 of 2014 "On combating Terrorism Crimes", contain vague and broad definitions of criminal offences, in contravention of international human rights standards. Such provisions also defy the principle of legality and open the door to arbitrary interpretation and abuse. The principle of legality, fundamental in a system based on the rule of law, requires that crimes are enshrined in legal provisions that are clear, ascertainable, predictable and made public, thereby allowing individuals to understand clearly the limits set out by the law in question and to regulate their behaviour accordingly.

B. Independence and impartiality of the judiciary

1. Separation of powers and interference in the independence of the judiciary

30. The Special Rapporteur regrets that the principle of the separation of powers is not explicitly guaranteed in the Constitution. Together with the rule of law, the separation of powers opens the way to an administration of justice that provides guarantees of independence and impartiality. There should therefore be a clear demarcation between the respective competences of the different branches of power. As the Human Rights Committee indicated in its general comment No. 32 (2007) on article 14: Right to equality before courts and tribunals and to a fair trial, "a situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal" (para. 19).

31. In that context, it is important to note that in the United Arab Emirates, the legislative branch is not clearly separated from the executive. The majority of the members of the Federal National Council are not elected by the citizens, but appointed according to modalities defined by each Emirate. Furthermore, the Council does not have full legislative powers.

32. The administrative and financial supervision of the courts is a competence currently exercised by the Ministry of Justice. The composition of the Supreme Council of the Federal Judiciary is problematic, as out of a total of seven members, only three are judges. The other members are the Attorney General and three representatives of the executive. Also, the Council's mandate is very limited. Once the issue regarding its composition has been addressed, measures should be taken to strengthen the role played by the Council. It could include, for instance, responsibility for the selection and appointment of judges and responsibilities related to the administration of the courts.

33. While any direct interference in the work of judges or threat against their independence is extremely difficult to document, reports and allegations of pressure exerted by members of the executive, prosecutors and other State agents, in particular members of the State security apparatus, are of serious concern to the Special Rapporteur. She is especially concerned that the judicial system remains under the de facto control of the executive branch of government.

34. The Special Rapporteur was informed by the Government that a new federal law on the judiciary was being drafted to replace Federal Law No. 3 of 1983. The draft law would reportedly increase the independence of the judiciary. While she welcomes that initiative, the Special Rapporteur is concerned about the lack of transparency in the drafting process. At the time of her visit, it seemed that there was insufficient consultation with representatives of the judiciary on the content of the draft law. The Special Rapporteur also regrets that she was not provided with a copy of the draft law, which would have allowed her to provide substantive comments.

2. Selection and appointment of judges

35. The president and judges of the Federal Supreme Court are appointed by presidential decree after approval by the Cabinet and ratification by the Federal Supreme Council. Other federal judges are appointed by presidential decree upon the proposal of the Minister of Justice. Appointments and nominations by the highest representatives of the executive branch can have a strong influence on judges' attitudes and behaviour. The Special Rapporteur is concerned that the current mechanism for appointing judges lacks transparency and may expose them to undue political pressure.

36. The Special Rapporteur wishes to highlight the importance of establishing and applying clear, objective and transparent criteria in the selection of judges, particularly with regard to qualifications, integrity, ability and efficiency, in order not only to identify the most suitable candidates and increase the perception of a fair selection process, but also to secure their independence. Competitive examinations conducted at least partly in a written and anonymous manner provide an important tool in the selection process.

3. Impartiality, public perception and confidence

37. The Special Rapporteur is concerned at reported instances in which judges appear to have lacked impartiality and shown bias, especially with regard to non-nationals of the United Arab Emirates. Among foreigners residing in the United Arab Emirates, there seems to be a perception that the domestic courts cannot be trusted, and more specifically that judges do not treat nationals in the same way as non-nationals. The Special Rapporteur was

told that foreigners' lack of confidence in the justice system is such that many of them do not report crimes or abuses.

38. It is worth noting that the State has the obligation, under international human rights law, to guarantee the rights of equality before the courts and fair trial to all individuals within its jurisdiction, regardless of nationality or any other status, including statelessness. Judges should also perform their functions without favour, bias or prejudice and should not manifest, by words or conduct, bias or prejudice towards any person or group on the grounds of race, colour, sex, religion or national origin, among others.[5] Those obligations are all the more relevant when one considers that foreigners living in the United Arab Emirates far outnumber nationals.

39. Moreover, the Special Rapporteur was told that in the federal courts, the professional relationship between judges and prosecutors is excessively close. They are said to be sharing chambers, entering court rooms together and discussing court minutes together, thereby jeopardizing the perception that judges are impartial and that equality of arms between the prosecution and the defence is respected. As noted in the Bangalore Principles of Judicial Conduct, judges should avoid situations that might reasonably give rise to suspicion or appearance of favouritism or partiality.

C. Judges who are non-nationals of the United Arab Emirates

40. Many judges from other Arab countries are recruited to serve in both federal and local judiciaries on a temporary basis; in some courts, they outnumber judges from the United Arab Emirates. Salaries are attractive and candidates are easily found, particularly in Egypt, Lebanon, Morocco and the Occupied Palestinian Territories. Such a phenomenon is far from common, worldwide. According to the authorities, hiring non-national judges was necessary to cope with the lack of qualified nationals due to the relative youth of the judicial system in the United Arab Emirates. The authorities also explained that other professions used to be more attractive financially. That situation is said to have been remedied in 2011 with a sharp increase in the salaries of judges. In the longer term, the judiciary would only be composed of nationals.

41. The independence of the non-national judges is a complex issue that requires careful consideration. The Special Rapporteur regrets that no detailed figures on non-national judges working at either the federal and local levels were provided during the visit, including their number, countries of origin, distribution at various hierarchical levels or the criteria used in their selection.

42. The tenure of non-national judges is not guaranteed in the same way as that of national judges. According to the information received, they are recruited under temporary contracts that have to be renewed annually. The total length of the contracts nevertheless depends on the rules regulating their secondment in their country of origin. Therefore, non-national judges' contracts can only be renewed up to a certain number of years, which may vary depending on their country of origin. The temporary nature of non-national judges' tenure is therefore inevitable.

43. Even though no specific cases were reported, the Special Rapporteur is concerned that non-national judges can be dismissed at any time, which renders them particularly vulnerable to pressure from any quarter, including from the public prosecution and members of the executive branch. In addition, the benefits and allowances allocated to national and non-national judges are allegedly different.

[5] See the Bangalore Principles of Judicial Conduct

44. While the Special Rapporteur understands the rationale behind hiring non-national judges and the limitations involved, she remains concerned about their independence. She also believes that more could be done to secure the tenure of non-national judges, even if only for a fixed period. Their conditions of work also need to be revised, as no discrimination should be tolerated between national and non-national judges, except that resulting from the rules of secondment of the countries of origin.

45. The Special Rapporteur would like to underscore that reducing the number of non-national judges is a legitimate path for the authorities to pursue. However, the process must be implemented in full conformity with the international human rights obligations of the State and its own domestic legislation.

D. Accountability and disciplinary measures

46. Another shortcoming affecting the independence and impartiality of the judiciary is the absence of a written code of conduct for federal judges, as currently only a draft exists. The local judiciary in Abu Dhabi has a code of judicial conduct containing 10 fundamental rules and principles. The lack of a code of conduct common to all judiciaries in the United Arab Emirates could prove problematic and lead to discrepancies between the Emirates and between the federal and local justice systems. The Special Rapporteur nevertheless welcomes the fact that disciplinary procedures against federal judges fall under the exclusive purview of members of the judiciary; indeed a disciplinary board composed of the president and the four most senior judges of the Federal Supreme Court is responsible for disciplining federal judges.

47. In that context, it is important to remember that the independence and impartiality of the judiciary does not aim to benefit judges themselves, but rather the court users, as part of their inalienable right to a fair trial. Integrity and accountability are therefore essential elements of judicial independence and are intrinsically linked to the implementation of the rule of law. While Federal Laws No. 10 of 1973 and No. 3 of 1983 provide some elements on the type of prohibited behaviour that might trigger disciplinary measures, detailed guidance needs to be provided to judges on the infractions that will give rise to disciplinary measures.

E. Fair trial, due process and administration of justice

48. The Special Rapporteur is extremely concerned at the serious allegations of violations of due process and fair trial guarantees made during her visit, especially with regard to State security-related offences. The consequences that such violations might have on people's lives and on respect for their human rights cannot be overemphasized.

1. Arbitrary arrest and pretrial detention

49. According to the Code of Criminal Procedure, persons who are arrested must be referred to a prosecutor within 48 hours. The prosecutor is entitled to extend the pretrial detention for up to a maximum of 21 days. Beyond that period, the detainee must be presented to a judge, who can extend the detention further. The Special Rapporteur regrets that the law does not provide for a maximum limit for pretrial detention, which would prevent abuses.

50. The Special Rapporteur notes with concern that the limited guarantees provided against arbitrary arrest and detention in the Code of Criminal Procedure do not apply to persons arrested on State security or terrorism-related charges. The relevant legislation

provides the prosecution with the competence to extend pretrial detention for up to three months before presenting the detainee to a judge.

51. Moreover, while the Code of Criminal Procedure prescribes that, unless an individual is arrested in flagrante delicto, an arrest warrant must be presented, the Special Rapporteur received many reports of people being arrested without a warrant. Such cases very often concern persons who were later accused of State security crimes. After being arrested by State security agents, most of those individuals were taken to secret detention facilities and kept incommunicado for days, weeks or even months, sometimes in solitary confinement. Such detentions may sometimes amount to enforced disappearances, as the authorities refuse to acknowledge that they have detained the person and/or refuse to confirm their fate and whereabouts. It goes without saying that in those places of detention, detainees have no access to a lawyer, in breach of the Basic Principles on the Role of Lawyers, which require that anyone accused of a crime has access to a lawyer no later than 48 hours after his or her arrest.

2. Torture and forced confessions

52. During her visit, the Special Rapporteur received credible information and evidence that many of the individuals who were arrested without a warrant and taken to unofficial places of detention were also subjected to torture or other forms of ill-treatment, including in order to extract confessions of guilt or testimonies against other detainees. Consistent testimonies of the following torture and ill-treatment were received: deprivation of daylight; exposure to bright electric light 24 hours a day; being blindfolded and threatened; being kept in very small cells without windows or a toilet; being forced to ask permission and being forced to strip in order to go to the toilet; exposure to extreme temperatures; beatings; extraction of fingernails and plucking of beards; being drugged; sexual assaults and threats thereof; and insults.

53. The Special Rapporteur was told that over the past few years, more than 200 complaints relating to torture and/or ill-treatment had been presented before judges and/or prosecutors, but that those complaints had not been received or registered, and consequently not been taken into account in judicial proceedings. Moreover, no independent investigation into those complaints had allegedly taken place. In one case reported to the Special Rapporteur, a judge ordered a medical committee to investigate allegations of torture and ill-treatment. The media reported that the resulting report proved that the allegations were false, yet the report was never shared with the defence counsel or presented to the court.

54. The Special Rapporteur is of the opinion that the lack of serious investigation into that type of allegation encourages impunity for perpetrators. It also constitutes a violation of the obligations of the United Arab Emirates under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

55. Judges and prosecutors have an obligation not only to respect and enforce the rights of the parties, including due process and fair trial guarantees, but also to uphold human rights. In that regard, the notions of due process and fair trial include the guarantee of a fair and public hearing by an independent and impartial tribunal established by law. Any evidence that may have been obtained through recourse to torture or ill-treatment cannot be received in court, but rather, must be used to prosecute those who used such methods.

3. Access to a lawyer

56. The Special Rapporteur is extremely concerned at reports that an accused person's access to a lawyer can be restricted by the police or the prosecution during the investigative phase. The Special Rapporteur is particularly alarmed at reports that individuals accused of

having committed crimes that jeopardize State security have extremely limited access to legal counsel. Allegedly, one defendant met his lawyer only once before his trial; another met his lawyer for the first time in court. Meetings with lawyers are often very short, lasting only a few minutes, and they are not held in private, but are supervised and reportedly even recorded by the prosecution or security services. The allegations thus reflect breaches of international human rights standards on the right to a fair trial and guarantees ensuring the free exercise of the legal profession.

4. Access to information, transparency and public hearings

57. The apparent lack of transparency during both the investigation phase and court proceedings remains a matter of concern to the Special Rapporteur, particularly with regard to criminal cases heard before the State security chamber of the Federal Supreme Court. In those cases, lawyers also seem to face serious difficulties in accessing information, especially investigation files. In one case, the defence lawyer could not access his clients' file until the beginning of court hearings. Lawyers must be granted access to files already at the investigative stage in order to allow them to prepare an adequate defence.

58. That lack of transparency is compounded when the court hearings are not public. The notion of fair trial includes the guarantee of a fair and public hearing. The publicity of hearings ensures the transparency of the proceedings, thereby providing an important safeguard for the defendant. According to information received, in many high-level cases heard before the State security chamber of the Federal Supreme Court, hearings were held in closed sessions or with limited public access. Exceptional circumstances can warrant that all or part of the public is to be excluded from court hearings; nevertheless, such an exclusion must be clearly motivated, and the judgement, including essential findings, evidence and legal reasoning must be made public.

59. The Special Rapporteur received reports of cases in which compulsory registration and other burdensome administrative requirements had to be complied with by defendants' relatives, international trial monitors and members of the public. Even those who fulfilled all the requirements were not always granted access to hearings. Full searches imposed at the entrance to court rooms has led to absurd situations, such as when a defence lawyer was prevented from entering the room with his case file. Courts do have the power to exclude all or part of the public in exceptional circumstances, but that cannot become the de facto rule. The Special Rapporteur is concerned that excluding the public from hearings spreads doubt about the fairness of judicial proceedings.

60. The Special Rapporteur is also concerned at reports that translations and interpretation in court cases involving non-Arabic speakers, while required by law, are not always provided in practice, or that their quality is poor.

5. Review by a higher tribunal

61. Anyone convicted of a crime has the right to have their conviction and sentence reviewed by a higher tribunal. Yet in the United Arab Emirates, cases related to offences directly affecting the interests of the Federation, including so-called State security crimes, fall under the exclusive jurisdiction of the Federal Supreme Court. Those cases are therefore considered in first and last instance by the State security chamber of the Federal Supreme Court with no possibility of review by a higher tribunal, as the Federal Supreme Court is the highest tribunal in the United Arab Emirates. That is in breach of international human rights standards. The Special Rapporteur welcomes the information provided by the Government that the authorities are considering amending the legislation to provide for the possibility of appeal in such cases.

6. Court administration and case management

62. The Special Rapporteur was witness to the fact that the local justice systems in Abu Dhabi and Dubai have developed highly advanced computer-based systems for the management of the courts and cases. The systems provide online access to a significant amount of information, including the status of cases, hearing dates and statistics. Impressive applications for smartphones have also been developed, which facilitate the work of judges, lawyers and court users alike. She hopes that such sophisticated tools will soon be made available for criminal cases and further developed at the level of federal courts. However, the differences in the quality of judicial services offered to the residents of the seven Emirates remain a matter of concern that should be addressed.

F. Access to justice and legal aid

63. The Special Rapporteur is concerned about access to justice for vulnerable members of the population, such as migrant workers, domestic workers and stateless persons, who are also known as *Bidoons*. They face serious obstacles in accessing the justice system, which include the lack of legal identity in the case of *Bidoons*, the lack of information about the legal system and judicial procedures available in a language the individual understands, and a lack of confidence in the justice system. It is therefore often impossible for vulnerable persons to seek remedies for abuses they suffer, which is a breach of the principle of equality before the courts. The Special Rapporteur notes with appreciation the information received on the efforts undertaken by the authorities to reach out to migrant workers, inform them about their rights and support them in their judicial proceedings, including by waving judicial fees. She hopes that those efforts will be strengthened.

64. At the federal level, institutional legal aid is available only to defendants who do not have the financial means to pay for a lawyer in the criminal justice system. The resources come from the budget of the federal courts and lawyers placed on a roster are assigned to those cases by judges.

65. Against that backdrop, the Special Rapporteur welcomes the free legal aid system set up in the Abu Dhabi judicial department. Since 2011, free legal aid has been provided to indigent people in that Emirate, including for civil cases. Three types of service are provided to litigants who cannot afford legal assistance: the assignment of a lawyer; the settlement of the fees of experts who may be required by the case in question; and legal assistance to detainees. The authorities informed the Special Rapporteur that the majority of the beneficiaries of those free legal services were migrant workers. The Special Rapporteur is encouraged by the information received from the Government that the Ministry of Justice is willing to study that positive example with a view to strengthening the legal aid system at the federal level.

G. Women in the justice system

66. During her visit, the Special Rapporteur looked into the integration of a gender perspective and women's rights in the justice system. She is extremely concerned that women are prohibited from becoming federal judges and federal prosecutors under articles 18 and 58, respectively, of Federal Law No. 3 of 1983. Those discriminatory provisions are in breach of the Convention on the Elimination of All Forms of Discrimination against Women, to which the United Arab Emirates acceded in 2004, and are therefore unacceptable.

67. The Special Rapporteur notes with appreciation that in the local judicial systems of Abu Dhabi and Dubai, women can become judges and prosecutors. In the local judiciary in

Abu Dhabi, there are currently 9 female judges and 18 female prosecutors. There are 73 women registered as lawyers with the courts of Abu Dhabi; they represent 19 per cent of the total number of lawyers there. In the local justice system in Dubai, there are 3 female judges and 17 female prosecutors. The Special Rapporteur was encouraged to hear that in those two Emirates, programmes aimed at empowering women and increasing their representation in the judiciary were in place.

68. Nevertheless, it seems that women still face institutional gender discrimination in many facets of the justice system, including when filing complaints with the police or appearing before the courts. Judges, prosecutors and even lawyers show the gender bias and discriminatory attitudes and practices present in society in the United Arab Emirates; that bias and discrimination reflect the traditional, patriarchal societal structure that is dominant in the United Arab Emirates.

69. In that regard, the Special Rapporteur is concerned at reports indicating that the majority of cases of sexual assault and domestic violence do not reach the courts. Significant social pressure is placed on women not to report such abuses to the police or the courts. The treatment and stigma faced by some women who dare to file a complaint for sexual assault is disturbing. In a widely publicized case, a woman of foreign nationality who went to the police to file a complaint for rape ended up being prosecuted and convicted on the grounds that she had engaged in illicit sex. The Special Rapporteur is also worried about the situation of female migrant workers, including domestic workers, who are in a particularly vulnerable situation when it comes to accessing justice and gaining redress in cases of abuse.

70. The Special Rapporteur wishes to underline that a more representative and gender-sensitive judiciary could play a determining role in empowering women to gain access to justice, claim their rights and break patterns of gender discrimination and impunity in cases of violence against women. The Special Rapporteur welcomes the information received about a recent initiative of the Ministry of Justice which aims to address some concerns relating to women and the judiciary; she wishes to receive further details on the content of that initiative.

H. Prosecution services

71. The federal public prosecution was established under the direct supervision and control of the Minister of Justice. It is headed by the Attorney General and composed of prosecutors of different ranks. Candidates are proposed by the Minister of Justice and approved by the Cabinet before being formally appointed by a federal decree of the President Such de jure control is of great concern to the Special Rapporteur as it manifestly jeopardizes the autonomy of prosecutors.

72. Against that background, the Special Rapporteur is seriously concerned about reports which indicate that the prosecution services are often influenced by members of the executive and the State security services. Prosecution services should be autonomous and prosecutors should perform their functions in an independent, objective and impartial manner, in compliance with the law and international legal principles, including the fundamental principle of the presumption of innocence.

73. The Special Rapporteur is troubled by credible allegations that evidence is sometimes manipulated and fabricated by members of the police, other security agencies or the public prosecution. She was also told that prosecution services pursue cases even when allegations have been proven unfounded. In one case reported to the Special Rapporteur, one of the accused was found guilty, despite the fact that he was in detention relating to another matter at the time that the offence with which he was accused was committed.

while another was outside the country and had evidence to prove it. They were nevertheless prosecuted and later convicted for acts they could not possibly have committed, according to clear and available evidence.

74. At both emirate and federal levels, the public prosecution forms part of the judiciary. It is responsible for investigating crimes; issuing arrest, search and seizure warrants; initiating criminal proceedings; and enforcing criminal judicial decisions. It also has competence to monitor detention centres and plays an active part in disciplinary proceedings against lawyers. Such a concentration of functions in the hands of the prosecution is a matter of concern to the Special Rapporteur, as it may hamper the independence and fairness of criminal investigations and proceedings. As a result, the principle of equality of arms, which requires procedural equality between the prosecution and the defence, could be affected.

I. Lawyers

75. Like judges and prosecutors, lawyers also play an essential role in ensuring the independence of the judiciary and upholding the rule of law. While they are not expected to be impartial in the same way as judges, they must be as free from external pressure and interference as judges. The Special Rapporteur is concerned about the absence of an independent, self-regulating bar association that oversees the process of admitting candidates to the legal profession, provides for a uniform code of conduct and enforces disciplinary measures, including disbarment. The establishment of such an independent association is a key element in ensuring the independence of lawyers.

76. The conditions for admission to the bar are set out in article 6 of Law No. 23 of 1991 and include a compulsory training period of two years, but no standardized written bar examination. As a result, there could be a significant disparity in lawyers' competence, which is of concern to the Special Rapporteur.

77. In the United Arab Emirates, the Council for the Admission of Lawyers Before the Courts, established in the Ministry of Justice, is in charge of the admission of lawyers and their registration on one of the rosters provided for by law.[5] The Special Rapporteur is concerned at the extensive involvement of the executive and the extremely limited participation of lawyers in the admission and registration of lawyers, which, in her view, is incompatible with the Basic Principles on the Role of Lawyers, as it undermines lawyers' independence. She also notes with concern that practising lawyers are required to apply to renew their enrolment every year.

78. The Special Rapporteur is also concerned about the involvement of the executive in disciplinary procedures against lawyers and their disbarment. Indeed, the Council for the Admission of Lawyers Before the Courts is also in charge of complaints against lawyers. Decisions can be challenged before the Federal Supreme Court. In addition, while a selective list of lawyers' rights and duties is provided in Law No. 23 of 1991, there is no comprehensive code of conduct or ethics that clearly defines what constitutes an infraction and how such infractions should be sanctioned. The Special Rapporteur welcomes the information received on a Ministry of Justice project on further developing the legal profession, which reportedly takes into consideration issues relating to education and training, guarantees of independence, and the adoption of a code of conduct, inter alia. She

[5] The Council for the Admission of Lawyers Before the Courts is composed of two representatives of the Ministry of Justice, one expert chosen by the Ministry of Justice, two judges from the Federal Supreme Court and the Court of Appeal, one prosecutor and one lawyer.

encourages the authorities to seriously consider the relevant recommendations contained in the present report.

79. The Special Rapporteur was alarmed at reports that some lawyers who take up cases related to State security have been harassed, threatened and had pressure exerted on them, including through constant surveillance, public campaigns of defamation, and the arbitrary deportation of non-national lawyers. She was also alarmed at the long list of obstacles that lawyers working on State security-related cases encountered on a daily basis while discharging their professional duties and representing their clients' interests.

80. Lawyers should never be identified with their clients or their clients' causes as a result of discharging their professional functions. Yet in at least one case, a lawyer was arrested when he was enquiring about the whereabouts of his clients at the State security prosecution branch. That is clearly unacceptable and should be immediately investigated. Families of persons accused of State security-related offences are also encouraged by the police, State security agents or prosecutors not to hire certain lawyers. That practice must stop.

81. Impunity surrounding such breaches of the independence of the legal profession has had a chilling effect on lawyers. It was reported to the Special Rapporteur that it has become extremely difficult to secure a lawyer in State security-related cases. Many lawyers refuse such cases or drop them early on owing to the pressure placed on them. That is extremely worrying and could lead to serious violations of defendants' right to a fair trial, including the right to be represented by counsel of one's choice.

J. Education, training and capacity-building

82. Authorities of the United Arab Emirates at both federal and local levels have acknowledged the importance of high-quality education and professional training for judges, prosecutors and lawyers in order to ensure an effective administration of justice. Efforts have been made and some measures taken to try to remedy the deficits of the United Arab Emirates in that domain. For instance, there are scholarship programmes for judges to study in the United States of America or Europe.

83. The Academy of Judicial Studies and Specialized Training in Abu Dhabi was set up in 2008 and provides training for judges, prosecutors and lawyers, among others. In Dubai, the Judicial Institute provides training for judges, prosecutors and lawyers, including compulsory training courses for judges and prosecutors. The Special Rapporteur was informed that a new diploma on human rights and the judicial system targeted at judges, prosecutors and lawyers was to be offered as of spring 2014. The course should consist of about 50 hours of training on a variety of human rights topics that are directly relevant to the judiciary. The Special Rapporteur welcomes that initiative and hopes that similar training courses can be offered throughout the United Arab Emirates, including to local and federal judges.

84. Yet challenges remain, in particular when it comes to the concrete application in the daily work of judges, prosecutors or lawyers of the knowledge gained during training. More efforts are therefore needed to improve the expertise of judges, prosecutors and lawyers and the quality of their work. The application of the knowledge and/or skills gained during training should be assessed and, on the basis or the results gathered, the needs for training should be revised. The training offered should also be diversified and include modules on specific human rights-related topics, such as women's rights or the rights of migrant workers. That will require serious commitment from the authorities, as well as the investment of resources. The Special Rapporteur wishes to underline that without such

efforts, the ultimate aim of the United Arab Emirates to nationalize its judiciary will not be achieved.

IV. Conclusions

85. **The Special Rapporteur welcomes the recognition of the principle of the independence of the judiciary in the Constitution of 1971. It is equally important to acknowledge that the justice system in the United Arab Emirates developed into an elaborate and complex court system with federal and local courts and judicial authorities in a relatively short time frame.**

86. **Despite commendable progress, the current judicial system in the United Arab Emirates faces challenges that negatively affect the delivery of justice, the enjoyment of human rights and the public's confidence in the judiciary. The Special Rapporteur is particularly concerned at reports of serious breaches of fair trial and due process guarantees, especially regarding, but not limited to, crimes related to State security. She is also concerned about the harassment, pressure and threats to which some lawyers are subjected, in breach of their independence, especially when they take up cases related to State security crimes.**

87. **While the achievements should be acknowledged and commended, it is fair to highlight the Federation's challenges and shortcomings when looking at the independence, impartiality, transparency, competence and efficiency of the justice system. As seen above, such challenges and shortcomings may directly undermine the exercise of human rights and present credible obstacles to the country's stable political development, and consequently its further economic growth.**

88. **As a member of the Human Rights Council, the United Arab Emirates should spare no efforts in implementing human rights recommendations effectively. The Special Rapporteur stands ready to provide technical assistance and advice if needed. United Nations offices and agencies could also be in a position to provide assistance. The United Nations Office on Drugs and Crime, for instance, has an array of ready-to-use tools that can be used to consolidate the functioning of the criminal justice system and enhance its transparency, in line with international human rights principles.**

89. **The Special Rapporteur strongly encourages the United Arab Emirates to continue engaging with human rights mechanisms; in particular, she hopes that they will receive more special procedures mandate holders in the near future. In that context, she recommends that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and the Working Group on Enforced or Involuntary Disappearances be invited to conduct official visits.**

V. Recommendations

90. **The International Covenant on Civil and Political Rights and the Optional Protocols thereto, and the International Convention for the Protection of All Persons from Enforced Disappearance should be ratified.**

91. **A national human rights institution in line with the principles relating to the status of national institutions (Paris Principles) should be established.**

92. **Specific steps should be taken to remedy discrepancies between the Emirates regarding the independence and impartiality of the judiciary and the transparency and efficiency of the administration of justice, with a view to strengthening the entire justice system and rendering it more consistent.**

Legal uncertainty

93. **All federal and local laws and regulations should be made easily available accessible to the public in order to enhance the principle of legal certainty.**

94. **Legislative provisions that are phrased in terms that are too broad and/or vague, in particular the relevant provisions of the Penal Code, Federal laws No. 2 of 2003 and No. 7 of 2014, and Federal Decree No. 5 of 2012, should be amended in order to comply with international human rights standards and the principle of legality.**

95. **Public awareness about the content of laws, their application, the obligations they entail and the differences that exist between the laws of the various Emirates should be raised.**

Independence and impartiality of the judiciary

96. **The principle of the separation of powers should be enshrined in the Constitution and concrete measures taken to strengthen the independence of the judiciary.**

97. **The functions of the Ministry of Justice and the federal judiciary and courts should be clearly separated; in particular, the administrative and financial supervision of the courts should be immediately transferred to the judiciary, so that the judiciary is self-governing.**

98. **The composition of the Supreme Council of the Federal Judiciary should be revised with a view to increasing the representation of judges and reducing or even excluding the participation of members of the executive.**

99. **The actors of the justice system and the public should be consulted meaningfully in the process of drafting the revised federal law on the judiciary.**

100. **In order to preserve their independence, judges should be appointed by an independent body composed mainly of judges; the participation of representatives of the executive should be avoided.**

101. **A standardized written examination should be set up in order to ensure that the competence and expertise of candidates to the bench are assessed in an anonymous and transparent manner.**

102. **Complaints relating to discriminatory attitudes and other improper behaviour of judges should be promptly investigated and, if corroborated, the judges concerned should be sanctioned.**

Non-national judges

103. **Non-national judges should be given the same guarantees as national judges, provided they are in line with the rules of secondment of their home countries; their contracts should not be renewed annually, but rather, should last for the whole duration of the secondment allowed by the home country.**

104. **A transparent and clear strategy, accompanied by a sufficiently resourced programme, should be adopted to progressively reduce the number of non-national**

judges, in full conformity with international human rights obligations; in the longer term, the goal should be to fully nationalize membership of the judiciary.

Accountability and disciplinary measures

105. **A written code of conduct for federal and local judges should be adopted, in line with the Bangalore Principles of Judicial Conduct.**

Fair trial, due process and administration of justice

106. **Violations of due process and fair trial should be investigated immediately and urgent measures taken to remedy them; such measures may include the revision of judgements and sentences, the release of detainees, and/or the granting of compensation.**

107. **The Code of Criminal Procedure should be amended to prescribe a limit for pretrial detention.**

108. **The de facto practices of arresting individuals suspected of having committed offences against the security of the State outside the purview of the law, and of keeping them in secret detention places, incommunicado and in solitary confinement should cease immediately; all arrests and detentions should be carried out in compliance with international human rights standards guaranteeing the liberty and security of the person.**

109. **Evidence and confessions that prosecutors or judges know or reasonably believe to have been obtained through recourse to unlawful methods, especially torture or cruel, inhuman or degrading treatment or punishment, or other human rights abuses, should never be accepted before a court as they constitute a grave violation of the defendant's human rights.**

110. **An independent body composed of professionals with international expertise and experience, including in medical forensics, psychology and post-traumatic disorders, should be established to investigate all claims of torture and ill-treatment alleged to have taken place during arrest and/or detention; such a body should have access to all places of detention and be able to interview detainees in private, and its composition should be agreed upon with defendants' lawyers and families.**

111. **Access to a lawyer in private should be granted in all cases no later than 48 hours after arrest, in full compliance with international standards relating to fair trial and the legal profession.**

112. **Lawyers should be guaranteed, both in law and in practice, full access to appropriate information, files and documents in the possession or control of the authorities; appropriate information includes, at a minimum, all materials that are exculpatory or that the prosecution plans to use in court against the accused.**

113. **Court hearings should be public unless restrictions can be justified clearly and in line with exceptions accorded under international human rights law.**

114. **Quality interpretation and translation for non-Arabic speakers should be provided at all stages of judicial proceedings, including during the investigation and initial detention phases.**

115. **The Constitution and related legislation should be amended to ensure the right to have one's conviction and sentence reviewed by a higher tribunal in all cases, including cases currently falling under the exclusive jurisdiction of the Federal Supreme Court.**

116. **Use of modern technology, in particular in the criminal justice system, should be extended and all hearings recorded in order to ensure the proper, adequate and transparent administration of justice.**

Access to justice and legal aid

117. **Efforts to adopt clear policies and measures to promote equal access to justice, particularly for vulnerable groups such as migrant and domestic workers, including by providing free legal aid and raising awareness of rights and procedures should be strengthened.**

118. **Steps should be taken towards the establishment of free legal aid for indigent people, including in non-criminal cases at both the federal and local levels throughout the United Arab Emirates.**

Women in the justice system

119. **Gender-based bias, stereotypes and discrimination persisting in the justice system should be addressed and eliminated urgently. To that end, training on gender equality and women's rights, including the prohibition of violence against women, and related international human rights standards, in particular the Convention on the Elimination of All Forms of Discrimination against Women, should be made compulsory for all judges, prosecutors and lawyers at both federal and local levels. The study of gender equality, women's rights and relevant international standards should also form an integral part of the legal education of judges, prosecutors and lawyers.**

120. **Federal Law No. 3 of 1983 should be amended urgently in order to allow women to become federal judges and prosecutors. Further measures and clear policies to improve the representation of women in the judiciary should be taken at both the federal and local levels. In particular, women should be encouraged to undertake legal studies and consider legal and judicial careers.**

121. **Gender-tailored procedures, policies and practices should be developed to promote women's equal access to justice.**

122. **Disaggregated statistical data on the number of complaints, investigations, prosecutions and convictions in cases of violence against women, including sexual violence, should be compiled.**

Prosecution services

123. **The autonomy of the public prosecution should be ensured vis-à-vis the Ministry of Justice; prosecutors should be able to perform their functional activities in an independent, objective and impartial manner without pressure from the executive or any other party.**

124. **Prosecutors should conduct themselves in a professional manner at all times and strive to be, and be seen to be, independent and impartial; they should perform their duties fairly, and respect and protect human dignity and human rights.**

125. **The competence and functions of the public prosecution should be revised and, where necessary, brought into line with international standards on the administration of criminal justice. In particular, the enforcement of judicial decisions should be the prerogative of judges, not prosecutors.**

Lawyers

126. A compulsory, standardized written bar examination should be instituted and conducted on an anonymous basis. Lawyers should participate fully in the preparation of the examination.

127. An independent, self-regulating bar association with statutes that comply with international standards should be established, inter alia to oversee the process of admitting candidates to the bar and enforce disciplinary measures, including disbarment. The association and its independence should be officially recognized.

128. A uniform code of conduct or ethics should be drafted with the full participation of lawyers. The code should provide for the applicable disciplinary procedure and give detailed guidance on the infractions that would trigger disciplinary measures against lawyers.

129. An impartial disciplinary body should be established by the legal profession and a clear procedure should be adopted for the conduct of disciplinary proceedings, in line with international standards.

130. The independence of lawyers should be respected and ensured by the authorities. Immediate measures should be taken to put an end to all forms of harassment, pressure and threats exerted on lawyers and to remove the many obstacles preventing lawyers from discharging their professional duties and asserting their independence.

Education, training and capacity-building

131. All judges, prosecutors and lawyers working at both the federal and local levels should have access to high-quality education and professional training, including on-the-job and specialized training. Training in human rights law should be made compulsory for all federal and local judges, prosecutors and lawyers.

132. The range of professional and on-the-job training should be expanded. Education and training opportunities should also be standardized between the various Emirates so as to ensure that judges, prosecutors and lawyers enjoy the same opportunities nationwide.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia* **

Summary

The Special Rapporteur on the independence of judges and lawyers conducted an official visit to Tunisia from 27 November to 5 December 2014. The purpose of the visit was to examine the situation of the justice system in the country since the revolution of 2011, before the temporary laws and bodies set up during the transition are replaced by permanent legislation and institutions.

During her visit, the Special Rapporteur met with a number of senior government officials at the Ministries of Justice, Human Rights and Transitional Justice, the Interior and Foreign Affairs, the President of the Temporary Judicial Commission (Instance provisoire de la justice judiciare) and a large number of judges from all levels of jurisdiction, the Public Prosecutor of the Court of Cassation and a number of prosecutors, and representatives of the Higher Committee of Human Rights and Fundamental Freedoms and the Truth and Dignity Commission. She also met with lawyers and representatives of civil society, academia, United Nations agencies and other inter-governmental organizations.

The report opens with an overview of the justice system and its constitutional and legal frameworks. In the second part of the report, the Special Rapporteur presents her findings and concerns with regard to (a) the need to adopt a comprehensive legal framework; (b) independence, impartiality, integrity and accountability; (c) the selection, appointment and conditions of tenure of judges; (d) budget and conditions of work; (e) case

* The summary of the present report is being issued in all official languages. The report itself, contained in the annex to the summary, is being issued in the language of submission and in Arabic only

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threats, attacks and lack of protection; (g) prosecutorial services; (h) mi
lawyers; and (j) education, training and capacity-building. She concludes
recommendations to all relevant stakeholders.

Annex

[Arabic and English only]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Tunisia

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I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, visited Tunisia from 27 November to 5 December 2014 at the invitation of the Government. She examined the situation of the justice system, and in particular how Tunisia endeavours to ensure the independence, protection and accountability of the judiciary, prosecutors and lawyers, and what obstacles may prevent them from discharging their functions effectively, adequately and appropriately.

2. The Special Rapporteur visited Tunis, Grombalia and Nabeul. She met with the Minister for Justice, Human Rights and Transitional Justice and with senior government officials in the Ministries of the Interior and Foreign Affairs and International Cooperation, as well as with members of the National Constitutive Assembly. She also met with the President of the Temporary Judicial Commission (Instance provisoire de la justice judiciare), who is also the First President of the Court of Cassation, the First Presidents of the Administrative Court and the Court of Audit, the First Presidents of the Courts of Appeal of Tunis and Nabeul, the President of the Court of First Instance of Grombalia, the Public Prosecutor of the Court of Cassation, the Deputy Public Prosecutor of the Court of Appeal of Tunis, the Public Prosecutor of the Court of Appeal of Nabeul and the Deputy Public Prosecutor of the Court of First Instance of Grombalia, the Director of Military Justice, the General Prosecutor before the Military Court of Appeal in Tunis, and other members of the judiciary. Lastly, she met with members of the legal profession as well as with representatives of the Higher Committee of Human Rights and Fundamental Freedoms, the Truth and Dignity Commission, civil society, academia, and United Nations agencies and other intergovernmental organizations.

3. The Special Rapporteur thanks the Government of Tunisia for facilitating a rich and interesting programme of meetings while respecting the independence of her mandate. She also thanks the United Nations Resident Coordinator and the Office of the United Nations High Commissioner of Human Rights (OHCHR) in Tunisia for their valuable cooperation and assistance.

II. Justice system

A Recent political context

4. Following the popular uprising in Tunisia demanding basic human rights and social justice, which began on 17 December 2010 and culminated in the ousting of President Ben Ali on 14 January 2011, Tunisia entered a period of transition during which time there were three interim Governments. Since the adoption of the new Constitution on 26 January 2014, Tunisia has held parliamentary elections, in October 2014, and presidential elections, in November and December 2014. The newly elected Parliament, which first convened on 2 December 2014, will be responsible for adopting the organic and other implementing laws pertaining to the reform of the judicial system as stipulated in the Constitution.

5. The judiciary in Tunisia used to be heavily dependent on the executive power, given that the former Supreme Judicial Council was presided by the President of the Republic and the Minister for Justice was the Vice-President. A majority of Council members were appointed by the executive, and, while its decisions were made by majority, the President or the Vice-President had a casting vote in the event of a tie. The procedures for the selection, appointment, transfer, removal, discipline and training of judges and prosecutors were largely in the hands of the executive.

6. In the aftermath of the revolution, the interim Constitution made provision to create a temporary judicial authority to replace the former Supreme Judicial Council.[1] The Temporary Judicial Commission was established as a provisional independent body with financial and administrative autonomy to supervise the careers of sitting judges and prosecutors.[2] This was deemed necessary to restore public trust in the judicial system after decades of executive interference in the independence of the judiciary and the proper administration of justice.

7. In May 2012, more than 80 judges and prosecutors were dismissed by a decree signed by the Minister for Justice. The Special Rapporteur is concerned that the dismissals did not respect due process and fair trial guarantees and did not comply with the relevant law on the statute for judges in force.[3] By some accounts, this unilateral decision was a reaction to public opinion, which demanded reform owing to the absence of vetting processes for the judiciary. The Special Rapporteur was informed that the effect of this decision had been to make judges deeply concerned about their own job security. She expresses her concern at the chilling effect that such mass dismissals may have had on the independence of the judiciary as a whole.

8. The Special Rapporteur was informed that some judges succeeded in challenging the unilateral decision of their dismissal before the Administrative Tribunal. When the Special Rapporteur met with the Chief Justice, 32 additional cases were allegedly still pending before the Tribunal.

9. The Special Rapporteur recognizes the important efforts made during the transition to reform and strengthen the independence of the justice system in compliance with international standards, including by creating the Temporary Judicial Commission, which is an improvement over its predecessor, the Supreme Judicial Council. She is encouraged by reports from different sources that the Commission,[4] which is composed of a majority of elected members, has been a step in the right direction towards strengthening the independence of judges through reportedly recent appointments it has made where competence prevailed over political expediency.

B. Constitutional provisions

10. Chapter V of the Constitution establishes the judicial power as one of the three branches of State. It includes important guarantees for the independence of judges, prosecutors and lawyers as the main actors of the judicial system.

11. The Supreme Judicial Council, established by articles 112 to 114 of the Constitution, is responsible for the effective administration of justice and the independence of the judiciary. The Supreme Judicial Council comprises four organs: the Council of the Judicial Judiciary, the Council of the Administrative Judiciary, the Council of the Financial Judiciary, and a plenary assembly of the three councils. Each of the three councils is

[1] Constituent Law No. 2011-6 of 16 December 2011, art. 22.

[2] Organic Law No. 2013-13 of 2 May 2013.

[3] Law No. 67-29 of 14 July 1967 as modified by Law No. 69-5 of 24 January 1969.

[4] Organic Law No. 2013-13 of 2 May 2013, arts. 5-11. The 20-member body comprises 15 elected members (10 judges elected by their peers, and five non-judges elected by the National Constituent Assembly by an absolute majority from a list of candidates drawn up by the election commission) and five appointed judges or prosecutors sitting in their official capacity (First President of the Court of Cassation presiding, the Public Prosecutor of the Court of Cassation, the General Director of Judicial Affairs, the Inspector-General heading the General Inspection Service in the Ministry of Justice and the President of the Real Estate Court.

competent to decide on the professional career of judges and prosecutors and on disciplinary measures. The mandate, structure, organization and procedures applicable to each of the four entities that compose the Supreme Judicial Council will, however, be determined by a separate law. Article 113 of the Constitution affirms that the Supreme Judicial Council is self-managed, and ensures its administrative and financial independence by preparing its draft budget and discussing it before the competent parliamentary committee.

12. The Constitution also establishes the Constitutional Court as an independent judicial body that oversees the constitutionality of laws, besides performing other tasks specified by the Constitution. A separate law will govern the organization of the Constitutional Court, its procedures and the guarantees enjoyed by its members. In addition, the Preamble to the Constitution stipulates that the State is built on the principle of the separation of powers and a balance between them. The Preamble also declares that the State must guarantee the supremacy of the law, respect for freedoms and human rights, the independence of the judiciary and equality of rights and duties between all male and female citizens. Article 20 of the Constitution also affirms that the State's international obligations take precedence over domestic law.

C. Court structure

13. The court system in Tunisia has separate judicial, administrative, financial and constitutional branches. The judicial court system includes criminal, civil, real estate and military courts comprising the Court of Cassation, courts of appeal, courts of first instance and district courts.

14. The Court of Cassation in Tunis serves as the final court of appeal on points of law in both civil and criminal matters. There are 10 courts of appeal, which are competent to hear first instance appeals from courts of first instance. There are 27 courts of first instance, in which a three-judge panel hears all commercial and civil cases irrespective of the monetary value of the claim. At the base of the court structure there are 85 district courts, in which a single judge hears cases.

15. There are three permanent military courts of first instance, a military court of appeal in Tunis, military indictment chambers and a military chamber at the Court of Cassation. Judgements of the military courts of first instance may be appealed to the military court of appeal and then reviewed on points of law by the military Chamber of the Court of Cassation.

16. Tunisia has a separate administrative court system composed of the Administrative Tribunal (Tribunal administratif) for litigation involving the administration, and the Court of Accounts (Cour des comptes), which examines the accounts and management of the finances of public authorities. Both are located in Tunis. In the event of conflict of jurisdiction between the judicial and administrative systems, the Council of Conflicts (Conseil des conflits de compétence),[5] composed of three judges from the Court of Cassation and three from the Administrative Tribunal, is called upon to decide. There is now a provisional body for the control of constitutionality of draft laws pending the effective establishment of the Constitutional Court stipulated in the Constitution.[6]

[5] Organic Law No. 96-38 of 3 June 1996.

[6] Organic Law No. 2014-14 of 18 April 2014, and Constitution, art. 149, para. 7.

D. Legal framework

17. At the international level, Tunisia is party to eight core international human rights treaties: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, the International Covenant on Civil and Political Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Optional Protocols thereto on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, and the Convention on the Rights of Persons with Disabilities Pursuant to the International Covenant on Civil and Political Rights, Tunisia has undertaken to respect and to ensure to all individuals within its territory and subject to its jurisdiction all rights related to, inter alia, the proper administration of justice, including the principles of equality before the law, the right to an effective remedy, the right to liberty and security, the presumption of innocence, the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law, the fundamental procedural guarantees of persons charged with a criminal offence, and the principle of legality.

18. As a State party to the International Covenant on Civil and Political Rights, Tunisia is under an obligation to adopt legislative, judicial, administrative, educative and other appropriate measures in order to ensure the establishment of an independent and impartial judiciary and the proper administration of justice by making such changes to domestic laws and practices as are necessary to ensure their conformity with international standards and norms.[7]

19. The State judicial system is based on civil law. Law No. 67-29 of 14 July 1967 governs the judicial organization of courts and tribunals (civil and criminal), the composition, mandate and powers of the Supreme Judicial Council (now replaced by the Temporary Judicial Commission and the statute for judges and prosecutors. The aforementioned law provides that sitting judges and prosecutors are part of the same judicial corps of magistrates (magistrats); they take the same entry examination, and graduate from the same school, the Higher Institute for Magistrates (l'Ecole supérieure de la magistrature); the same or very similar provisions are applicable to both judges and prosecutors in relation to selection and appointment, performance evaluation, promotion and disciplinary proceedings. Law No. 2013-13 of 2 May 2013 replaced the Supreme Judicial Council with the Temporary Judicial Commission; the provisions of Law No. 67-29 not in conflict with Law No. 2013-13 remain in force.

III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

A. Need to adopt a comprehensive legal framework

20. The achievements of the Constitution in the justice sector need to be translated into reality. The Parliament has the task of adopting the necessary laws to operationalize the Supreme Judicial Council by the end of April, and the Constitutional Court by the end of

[7] Human Rights Committee, general comment No. 31 (CCPR/C/21/Rev.1/Add.13).

October 2015. These laws need to be aligned with the Constitution and respect international human rights standards and principles.

21. The Special Rapporteur recognizes the important efforts made during the transition to reform and strengthen the independence of the justice system in compliance with international standards. Transitions, however, always come with challenges. This has been the case in Tunisia, where transitional laws and provisional bodies have attempted to bridge the gaps pending the adoption of new legislation and the establishment and implementation of permanent institutions.

22. The Special Rapporteur believes that an overhaul of the legislation relating to the legal system is necessary to implement the Constitution and to ensure an independent judiciary and well-functioning justice system.

B. Independence, impartiality, integrity and accountability

23. The Constitution, in its article 102, consecrates the judiciary as an independent power that guarantees justice, the supremacy of the Constitution, the sovereignty of the law and the protection of rights and freedoms. Articles 102 and 103 also guarantee the principle of the individual independence of judges, and the principles of impartiality, integrity, competence and diligence. Article 109 prohibits all interference with the judiciary.

24. The Special Rapporteur heard numerous complaints from both judges and lawyers about the lack of individual independence of judges, and was told that the most important priority was to combat judicial corruption. One positive step that the Special Rapporteur wishes to highlight is the establishment by article 130 of the Constitution of the Good Governance and Anti-Corruption Commission as an independent body. The Commission has investigative powers within the public and private sectors, and has a crucial role to play in ensuring accountability, including of the judiciary, and in improving the credibility of and confidence in the justice system.

25. The Special Rapporteur heard complaints about the selectivity and partiality shown in the way some judges treat lawyers and their clients. She was informed that, during hearings, judges sometimes ask lawyers or their clients personal or impertinent questions that are not relevant to the facts of the case to destabilize them. The Special Rapporteur strongly believes that such allegations are very serious and merit detailed investigation. Such evidence should be brought before the newly created Supreme Judicial Council.

26. The Special Rapporteur believes that it is important for Tunisia to ensure that necessary safeguards are put in place to effectively guarantee the independence of judges. For example, judges should have recourse to an independent authority, such as the Supreme Judicial Council, when their independence is under threat, and the new statute for judges should have specific sanctions for those seeking unduly to influence judges.

1. Supreme Judicial Council

27. The composition of the Supreme Judicial Council matters greatly to judicial independence, as it is required to act in an objective, fair and independent manner when selecting judges.

28. The Constitution provides that two thirds of each of the four bodies are magistrates (sitting judges or prosecutors), and one third are non-magistrates who are independent experts. For the members who are magistrates, the majority are elected, while the rest will be appointed judges and prosecutors sitting in their official capacity. According to article 112, the overall majority of the members of each of the four bodies is to be elected for a single six-year term. The new law will specify the number of members for each of the four

bodies of the Supreme Judicial Council, who is eligible for election or appointment, the criteria, and who will elect or appoint the members. At the time of writing, a preliminary draft of the law had been published.

2. Accountability

29. Article 130 of the Constitution states that judges are accountable for any shortcomings in the performance of their duties. Judges enjoy immunity against criminal prosecution and may not be prosecuted or arrested unless their immunity is lifted. They may be arrested if caught in the act of committing a crime; one of the three judicial councils on which they depend are to be informed to decide on the request for lifting immunity. Article 114 provides that decisions on discipline are to be taken by the relevant judicial council.

30. The preamble to the Bangalore Principles on Judicial Conduct explicitly states that the Principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial and are intended to supplement and not to derogate from existing rules of law and conduct that bind judges.

31. According to Principles 17 and 20 of the Bangalore Principles, disciplinary proceedings should be clearly established in law and respect fair trial and due process guarantees, including the right to judicial review. The law must give detailed guidance on infractions by judges triggering disciplinary measures, including the gravity of the infraction that determines the kind of disciplinary measure to be applied in the case at hand (A/HRC/11/41, para. 57).

32. A code of conduct or ethics should be put in place that clearly sets out reprehensible behaviour and respective sanctions for the judiciary. The Special Rapporteur welcomes the fact that the judges and staff members of the Court of Accounts have a charter of professional ethics dated July 2010. Such codes of conduct should be elaborated by judges themselves and be sufficiently detailed and comprehensive, in accordance with the Bangalore Principles and the principle of legality. Once the codes of conduct have been adopted for other sections of the judiciary, adequate training should be organized to raise awareness and to ensure their implementation.

33. The Special Rapporteur was informed that the General Inspection Authority of the Ministry of Justice, which together with the former Supreme Judicial Council used to conduct disciplinary proceedings against judges before the revolution, continued to play a role in disciplinary matters despite the replacement of the Supreme Judicial Council with the Temporary Judicial Commission. Under the law creating the Temporary Judicial Commission, the Minister for Justice may seize he Commission by transmitting a disciplinary file against a judge, prepared on the basis of a report by the General Inspection Authority.[8] The Special Rapporteur believes that this competence should be transferred to the Supreme Judicial Council. If the General Inspection Service were to continue to have a role as an inspection body, it should be subordinated to the Supreme Judicial Council, not to the Minister for Justice.

34. In the above connection, the Special Rapporteur recalls that in general, the body that adjudicates cases of judicial discipline should be separate from the persons or body who initiate complaints or investigations that may lead to disciplinary measures, and must not be influenced by or have as members persons who initiated such proceedings. In this

[8] Organic Law 2013-13 of 2 May 2013, art. 16.

regard, the Special Rapporteur welcomes the fact that article 114 of the Constitution provides that decisions on discipline are to be taken by the relevant judicial council.

C. Selection, appointment and conditions of tenure of judges

1. Statute for judges

35. The new statute for judges should set out fair, transparent and objective criteria and procedures for the selection, appointment, tenure, promotion, transfer, removal and discipline of judges. This is an important safeguard for the independence of judges.

36. Institutional independence of the judiciary should be accompanied by financial and administrative independence.

2. Qualifications and selection

37. Principle 10 of the Basic Principles on the Independence of the Judiciary states that persons selected for judicial office should be individuals of integrity and ability with appropriate training or qualifications in law. Furthermore, any method of judicial selection should safeguard against judicial appointments for improper motives and against any type or grounds of discrimination. A former mandate holder underscored that competitive examinations conducted at least partly in a written and anonymous manner could serve as an important tool in the selection process of judges (A/HRC/11/41, para. 30). The Special Rapporteur adds that written examination should be followed up by an oral and public one to assess the competence, ability and integrity of future judges. Furthermore, a full investigation into the conduct and prior record of candidates should be carried out prior to their appointment to ensure that their behaviour or activities satisfy the appearance of propriety, which, is a principle essential to the performance of all of the activities of a judge.[9]

38. The Constitution provides that judges are to be nominated by presidential decree on the basis of recommendations of the Supreme Judicial Council. The nomination of senior judges is to be made by presidential decree, after consultation with the Prime Minister, on the basis of a list of candidates provided by the Supreme Judicial Council. According to article 106 of the Constitution, senior judicial positions will be decided by law.[10]

39. As already stated by the Special Rapporteur, if the law stipulates that an organ of the executive branch is the one formally appointing judges following their selection by an independent body, the recommendations of such a body should only be rejected in exceptional cases and on the basis of well-established criteria that have been made public in advance. Should the executive body not follow the recommendations, there should be a specific procedure by which it is required to substantiate in writing, and made accessible to the public, the reasons for which it has not followed the recommendation. This would enhance transparency and the accountability of the selection and appointment process (A/HRC/11/41, para. 33).

[9] Bangalore Principles of Judicial Conduct, Value 4

[10] Law No. 67-29 of 14 July 1967, art. 7 bis lists the First President of the Court of Cassation, the Public Prosecutor of the Court of Cassation, the Prosecutor-General Director of Judicial Services, the Inspector-General of the Ministry of Justice, the President of the Real Estate Tribunal, the First President of the Court of Appeal of Tunis and the Public Prosecutor of the Court of Appeal of Tunis.

3. Conditions of tenure and promotion

40. According to article 114 of the Constitution, each of the three judicial councils (judiciary, administrative and financial) has the responsibility to decide on the professional career of judges. The Constitution does not have any specific provisions on the security of tenure of judges, stipulating only in article 107 that a judge may not be transferred without his or her consent and that a judge cannot be suspended, dismissed or be subject to disciplinary sanctions except in accordance with the instances stipulated in the law and subject to such guarantees as those established by law and by virtue of a motivated decision of the Supreme Judicial Council.

41. The Special Rapporteur emphasizes that the new statute for judges should comply with Principle 18 of the Basic Principles on the Independence of the Judiciary on the issue of security of tenure by providing that judges may only be removed or suspended for reasons of incapacity or behaviour that renders them unfit to discharge their duties. She expresses her concern at reports that judges have been transferred without their prior consent.

42. The Special Rapporteur also heard concerns that judges had been reappointed beyond the indicative retirement age (reportedly set at 60 years of age) on an ad hoc basis and without clear criteria. The new statute for judges should, in compliance with Principle 12, Basic Principles on the Independence of the Judiciary, guarantee security of tenure of judges until a mandatory retirement age or the expiry of their term of office.

43. The promotion of judges is currently based on the principle of seniority.[11] In addition to experience, promotion should, in compliance with Principle 13 of the Basic Principles on the Independence of the Judiciary, be based on objective criteria, in particular ability and integrity.

44. The performance evaluation of judges, including newly appointed judges on their one-year period of probation, is currently carried out by the President of the Court of Appeal after consultations with the Public Prosecutor, and on the basis of observations by the President of the court at which the judge is serving.[12] The Special Rapporteur strongly believes that there is a need for an assessment procedure that does not only depend on court presidents, given that such a procedure may lead to a system where judges unduly consult the President in specific cases instead of making their own independent decisions. Furthermore, the involvement of the Public Prosecutor is questionable, because this might also interfere with the independent decision-making of judges or lead to prosecutorial bias, in contradiction of the principle of equality of arms. The Special Rapporteur notes with concern that the current law does not prescribe any principles according to which the performance of judges should be assessed or any safeguards to ensure that the assessment is conducted in a fair, objective and transparent manner.

D. Budget and conditions of work

45. During the mission, the Special Rapporteur heard from a range of interlocutors that the poor conditions of work, including low salaries, inadequate or inexistent office infrastructure, lack of basic facilities, and non-systematized methods of work, were a major challenge to the independence of the judiciary. Providing judges with an adequate salary, in accordance with Principle 11 of the Basic Principles on the Independence of the judiciary,

[11] Law No. 67-29 of 14 July 1967, art. 33.
[12] Ibid., art. 34.

would be an important measure to counter pressure against them and to promote independent decision-making.

46. Another major challenge that the Special Rapporteur identified is the issue of corruption of the judiciary. Lack of resources may render judges more vulnerable to corruption, with the result that their independence is weakened. Furthermore, the allocation and administration of those resources by the executive may render the judiciary more vulnerable in accepting to be influenced over the outcome of sensitive cases, thereby weakening its independence.

47. According to Principle 7 of the Basic Principles on the Independence of the Judiciary, it is the duty of each Member State to provide adequate resources to enable the judiciary to perform its functions properly.

48. A fixed percentage of the national budget (between 2 and 6 per cent) should be allocated to the judiciary to enable the judiciary to properly perform its functions so that their resources are not used to threaten or to bring pressure upon a particular judge or judges (A/HRC/11/41, para. 37).[13]

49. The Special Rapporteur found that there was no clarity as to whether there was a fixed percentage of the national budget allocated to the judiciary and, if there was one, it was reportedly as low as 0.7 per cent. The three judicial councils, in coordination with the Supreme Judicial Council, should manage and prepare their own budget and administer the funds directly. They should each also have appropriate human and material resources to ensure improved conditions and methods of work that are conducive to the exercise of the judges' fundamental functions.

50. Furthermore, the Special Rapporteur considers that the Supreme Judicial Council should give its consent if the budget allocated is to be reduced from one fiscal year to another (A/HRC/11/41, para. 41). The Supreme Judicial Council should administer the funds directly, and be subject to independent and external oversight (ibid. para. 43).

E. Case management, internal regulations and procedures, judicial delays and access to justice

51. An important aspect of the fairness of a hearing is its expeditiousness. In its general comment No. 32, the Human Rights Committee highlighted that, in both civil and criminal cases, undue delays that cannot be justified by the complexity of the case or the behaviour of the parties detract from the principle of a fair hearing and does not serve the interests of justice (CCPR/C/GC/32, paras. 27 and 35).

1. Case management

52. The Special Rapporteur learned about the apparent lack of transparency in the assignment of cases to judges, the constitution of benches, decisions on hearing dates, lack of information on when judgements are made, and the need to physically go to court to personally file documents and follow up on cases. She was informed that there was no information technology infrastructure for the automatic allocation or management of cases, no databases recording the number, type and status of cases before the courts or any meaningful statistics produced thereon or published.

53. The Special Rapporteur heard complaints from other professionals involved in the administration of justice, such as notaries, fiscal advisers and judicial experts about

[13] Basic Principles on the Independence of the Judiciary, Principle 11.

outdated laws and practices governing their respective roles. The laws governing the status of each of these professions, the conditions for entry into them, the training required, the maintenance of lists with the updated contact details of such professionals, who appoints them during a case, their remuneration, whether legal or other advice can be provided directly to the lay client, and their rights of audience need to be revised and regulated in consultation with the legal profession.

2. Judicial delays

54. The Special Rapporteur was informed that there was a complete lack of efficiency in the administration of justice. For example, judgements are first hand-written and then typed, work processes are slow, there is no methodology for preparing cases for hearings, too many people are working in the courts without clear responsibilities and allocation of tasks, and nobody administers court work. The Special Rapporteur learned that, in one court, there had been no ink for a printer for an entire year because courts were not involved in the management of their budget and everything had to go through the Ministry of Justice.

55. The Special Rapporteur heard accounts of court files disappearing then reappearing several months later owing to the lack of court clerks, and that lawyers had to pay to physically locate their files in court. She was also informed that those employed as court clerks were not adequately trained to provide an efficient service to all court users. Consequently, judges were overwhelmed by their workload, given that they were required to perform purely clerical tasks as well.

56. The Special Rapporteur learned from various sources that a very high number of cases were appealed: up to 70 per cent of cases from the courts of first instance are appealed to the Court of Appeal, and up to 70 per cent of cases from the Court of Appeal go to the Court of Cassation. The Special Rapporteur is concerned about the lack of relevant statistical data on case management, the impact of the lack of methodology and efficiency and the consequent delays on the quality of justice and the accessibility of the justice system. Such delays in the administration of justice may result in miscarriages or the denial of justice.

3. Pretrial detention

57. Article 27 of the Constitution provides that a defendant should be presumed innocent until proven guilty, and be entitled to a fair hearing and to all the necessary guarantees relating to the right to a defence throughout all phases of prosecution and trial. According to article 29, persons placed under arrest are to be immediately informed of their rights and the charges against them, and may appoint a lawyer to represent them.

58. According to article 13 bis of the Code of Criminal Procedure, a person is allowed to consult with a lawyer only after having appeared before an investigative judge; during police custody (garde à vue), suspects are totally isolated, without access to counsel or family for up to six days. The Special Rapporteur was informed that there were judges who did not understand or believe in the right to a defence; apparently, in some criminal cases, the defence lawyer is considered an "enemy" by the judge and the prosecutor.

59. The Special Rapporteur is concerned that the above-mentioned factors run counter to the right to a fair hearing, the right to defence and the right to have access to legal counsel, and open a serious gap between the law and the guarantees enshrined in the Constitution. The excessive length of police custody combined with the fact that a suspect does not have access to a lawyer may create the circumstances for ill-treatment (A/HRC/19/61/Add.1, paras. 17-20). Police custody comes under the oversight of the Prosecutor General, who has the sole authority to extend, in exceptional cases, the initial period of police custody of

three days by another three days. It is also mandatory for the judicial police to have a detainee examined by a doctor upon the request of the detainee or the detainee's relatives.[14] The Special Rapporteur heard numerous complaints according to which as many as 90 per cent of police officers refuse to grant a medical check-up when requested and, even when it is carried out, it is not recorded in the detention written record (procès verbal). The Special Rapporteur also heard complaints that evidence obtained under torture was not expressly excluded or systematically challenged in court, which is contrary to article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Special Rapporteur welcomes the stated intention of the authorities to amend the Code of Criminal Procedure.

4. Access to justice

60. The Special Rapporteur learned that a legal aid system is in place for civil, but not in all criminal, matters;[15] the system, however, is underfunded and has restrictive conditions for eligibility, while the low retainer fee for court-appointed defence counsel undermines the very effectiveness of legal aid. The Special Rapporteur recalls that the formal appointment of counsel by the State is insufficient to satisfy the obligations of the State under article 14 paragraph 3 (d) of the International Covenant on Civil and Political Rights. The State is indeed required to take "positive action" to ensure that applicants effectively enjoys their right to free legal assistance (A/HRC/23/43, para. 40).

F. Threats, attacks and lack of protection

61. The Special Rapporteur was informed that lawyers active in the defence of human rights were targeted and threatened, in particular those defending suspected terrorists. Furthermore, the media reportedly associate the lawyers defending suspected terrorists with their clients or their clients' causes. The Special Rapporteur also heard reports from numerous sources on the increasing coverage by the media of trials where journalists make legal qualifications about alleged crimes on television in violation of the right of suspects to be presumed innocent until proven guilty, thus compromising their right to a defence.

62. The Special Rapporteur was informed that judges were often subjected to aggressive media scrutiny, such as when they decide to release suspects and subsequently come under media pressure to justify their decision.

63. The Human Rights Committee, in its general comment No. 32, pointed out that it was a duty for all public authorities to refrain from prejudging the outcome of a trial, for example, by abstaining from making public statements affirming the guilt of the accused, and that the media should avoid news coverage undermining the presumption of innocence (CCPR/C/GC/32, para. 30).

64. The Special Rapporteur was informed that the position of Prosecutor of the Court of First Instance in Tunis was one of the most dangerous in Tunisia, given that the Prosecutor has the exclusive competence to initiate terrorist-related offences and to decide on whether to prosecute.[16]

65. The Special Rapporteur emphasizes that the State has a positive obligation to take effective measures to ensure the personal safety of judges, lawyers, prosecutors and their families (see A/64/181, para. 68, A/HRC/11/41, para. 79, A/HRC/20/19, para. 78).

[14] Code of Criminal Procedure, art. 13 bis.
[15] Law No. 2002-52 of 3 June 2002.
[16] Law No. 2003-75 of 10 December 2003, art. 34.

G. Prosecutorial services

ecution is part of the

66. Article 115 of the Constitution provides that the public prosecr in the Constitution. judicial justice system, and is covered by the guarantees provided for mework of the penal Moreover, public prosecutors exercise their functions within the fram policy of the State as regulated by the relevant laws.

vides that prosecutors

67. Guideline 13 of the Guidelines on the Role of Prosecutors provi ublic interest, and act should, inter alia, carry out their functions impartially, protect the pub with objectivity.

orts that it is essential

68. The Special Rapporteur has already highlighted in previous repo objectively and in a that prosecutors be able to play their role independently, impartially, c see A/65/274, para. transparent manner in the discharge of their functions (for example, mpunity and function 18). They also play a key role in protecting society from a culture of im as gatekeepers to the judiciary (A/HRC/20/19, para. 93).

e same judicial corps

69. As stated above, sitting judges and prosecutors are part of the nt, transfer, removal, and subject to the same rules with regard to selection, appointmentive power. discipline and training, which are still partly in the hands of the executiv

prosecutors that they

70. The Special Rapporteur was informed by sitting judges and pr careers, which they could seamlessly move from one function to the other during their ey did not regard this perceived as an enriching experience in understanding both roles. Theyr did, however, hear as an issue undermining their independence. The Special Rapporteur ous doubts regarding reports that the proximity between judges and prosecutors raised seriomuch confusion about the independence, impartiality and objectivity of judges, and created mu Special Rapporteur the respective roles of sitting judges and public prosecutors. The dges and prosecutors emphasizes that the perception by the general public of sitting judgblic confidence in the performing different roles and functions is important, given that publite institution respects proper functioning of the rule of law is best ensured when every State0) and its actors have the sphere of competence of other institutions (A/HRC/20/19, para. 40) a separate career.

e Prosecutor is the

71. According to the Code of Criminal Procedure, the State cutorial discretion to hierarchical superior of the judicial police (art. 10), and has prosecu prosecution service decide whether to dismiss complaints received (art. 30). The public as a range of powers falls under the authority of the Minister for Justice.[17] The Minister has of criminal law, to vis-à-vis the State Prosecutor, including to report known violations tent jurisdiction with initiate or to have someone initiate prosecution, or to seize the competcis in contradiction to the written submissions that the Minister considers desirable.[18] This is executive branch of the principle of independence of the public prosecution service of the Government.

secutors, prosecutors

72. According to the Guidelines 14 and 15 on the Role of Prose every effort to stay should not initiate or continue prosecution, or should otherwise make unfounded and they proceedings when an impartial investigation shows charges to be u public officials. The should give due attention to the prosecution of crimes committed by Pster for Justice never Special Rapporteur was informed that, reportedly, the outgoing Minist r, also told that, even gave instructions to prosecutors. The Special Rapporteur was, however, m the Minister when if in practice public prosecutors do not accept written instructions from stigative judge, there deciding on whether to prosecute a case and to assign it to an investi

[17] Law No. 67-29, art. 15.

[18] Code of Criminal Procedure, art. 23.

were no clear and written criteria, so they followed the prevailing public opinion or the political trend set by the Government. For example, the Special Rapporteur was informed that there had been a number of prosecutions against journalists, bloggers and artists who had criticized the Government, and that the general public felt that the judicial system was defending the interests of the Government in targeting these persons. The Special Rapporteur emphasizes that this is not desirable: prosecutors should avoid confusion between public and State interests, namely, the exercise of functions in the public interest, such as criminal prosecution, should not be seen as having the role of protecting the interests of the Government, a political party or any other State institution (A/HRC/20/19, para. 50).

73. The selection and promotion of prosecutors should be based on objective criteria and preclude appointments for improper motives. Furthermore, the law on the Supreme Judicial Council and the statute for judges should specify objective criteria for appointment and promotion, including the appropriate skills, knowledge and training. The powers of the executive over the promotion and transfer of prosecutors should cease; in this regard, the Special Rapporteur is pleased to note that article 114 of the Constitution provides that decisions on discipline are taken by the relevant judicial council.

H. Military courts

74. The Constitution provides that military courts are to be specialized in the domain of military offences, stipulating in its article 110 that the relevant law[19] is to regulate their jurisdiction, composition, applicable procedures and the statute for relevant judges.

75. In its general comment No. 32, the Human Rights Committee affirmed that it is important to take all necessary measures to ensure that military trials take place under conditions that genuinely afford the full guarantees stipulated in article 14 of the International Covenant on Civil and Political Rights (CCPR/C/GC/32, para. 22).

76. The Special Rapporteur reiterates her view that military courts should only have jurisdiction over military personnel who commit military offences or breaches of military discipline, and then only when those offences or breaches do not amount to serious human rights violations. Exceptions are to be made only in exceptional circumstances and must be limited to civilians abroad and assimilated to military personnel (A/68/285, para. 89).

77. The Special Rapporteur expresses her great concern at the accounts heard that civilians were still being tried by military courts. She welcomes the reforms aimed at providing attributions of independence to the military justice system, including decree-law No. 69 of 2011 (A/HRC/24/42/Add.1, para. 17), and the possibility for victims to be *partie civile* in proceedings before military courts and to make claims for reparation for the harm suffered (ibid., para. 49).

78. The Special Rapporteur is concerned about the institutional dependence of military judges on the Minister for Defence, who presides over the Military Judicial Council, which is responsible for appointments, promotions and disciplinary measures (even though in actual practice the Minister for Defence has reportedly never presided over the Military Judicial Council). The Special Rapporteur notes that military judges are independent of the military hierarchy when exercising their functions, are subject to the supremacy of the law,[20] and are protected against threats or attacks in the exercise of their duties.[21] The

[19] Decree No. 9 of 10 January 1957 promulgated the Code of Military Justice, as amended by Law No. 2011-69 of 29 July 2011 and Law No. 2011-70 of 29 July 2011.

[20] Law No. 2011-70, art. 5.

Special Rapporteur is equally concerned about the hierarchical dependence of military judges on their superiors, given that they are subject to general disciplinary rules.[22]

I. Lawyers

79. Article 105 of the Constitution recognizes the important role of lawyers as a free independent profession that contributes to the establishment of justice and the defence of rights and liberties. Lawyers are entitled to the legal guarantees that ensure their protection and the fulfilment of their tasks.

80. Lawyers play an essential role in the right to justice, in access to justice, and in the right to a defence. In order to fulfil their role, they need a legal and institutional framework that allows them to exercise their profession freely and a judicial culture that allows them to meet their clients in private and to communicate with the accused in conditions that respect fully the confidentiality of their communications (A/HRC/8/4, para. 40).

81. The preamble to the Basic Principles on the Role of Lawyers provides that adequate protection of the human rights and fundamental freedoms to which all persons are entitled requires that all persons have effective access to legal services provided by an independent legal profession.

82. The Special Rapporteur heard complaints that court-appointed defence counsel is mandatory only in certain cases,[23] and are paid a minimal retainer fee, considered derisory by lawyers, currently fixed by the State at 180 dinars (approximately $90).[24] Moreover, such work is allocated to junior lawyers with little or no experience, or to interns, who work unsupervised. The Special Rapporteur reiterates that the lack of effective legal assistance at all stages of the criminal justice process is contrary to article 14, paragraph 3 (d) of the International Covenant on Civil and Political Rights (see A/HRC/23/43, para. 94 (c)). This is a worrying practice that compromises the right of defence.

83. The Special Rapporteur heard complaints about the lack of necessary infrastructure in prisons; for example, in a specific women's prison, there is reportedly only one office made available for lawyers to meet clients in private, with the result that some have to wait for hours to consult with their clients, and in some instances return the following day. The Special Rapporteur was informed that, in one case, a lawyer had had to wait for nearly four hours to meet a client in what appeared to be an empty prison. It was reported that, in another prison that housed thousands of prisoners, only four offices were available for confidential lawyer-client meetings. Reportedly, in some prisons, the lawyers could not communicate with their clients in conditions that respect fully the confidentiality of communications; moreover, in one prison, equipment had been installed to spy on lawyers during such visits, and the information obtained was handed over to the prosecutor. The Special Rapporteur is seriously concerned about such allegations, which would be in breach of the right to a defence and the principle of professional privilege.

84. The Special Rapporteur is even more concerned about reports that lawyers are sometimes considered "enemies" of sitting judges and prosecutors. She highlights the fact

[22] Ibid., art. 6.

[23] Ibid., art. 19.

[24] Law No. 2002-52 of 3 June 2002, art. 1 provides that, in civil matters, legal aid may be granted to the plaintiff or the defendant at any stage of the proceedings, whereas in criminal matters it may be granted if the offence committed is punishable by imprisonment of at least three years and if the party requesting legal aid is not a repeat offender.

[25] Decree law No. 2011-1178 of 23 August 2011, art. 1.

that lawyers play an essential role in guaranteeing the right to defence and, in accordance with the Basic Principles on the Role of Lawyers, should not be confused with their clients or their clients' causes.

85. The Special Rapporteur is pleased to note that there is an independent bar association in Tunisia that oversees the exercise of the legal profession. However, lawyers have complained about the lack of sufficient means to oversee effectively the exercise of the legal profession.

J. Education, training and capacity-building

86. The Special Rapporteur found that the main challenge in the reform of the judiciary in Tunisia is to change the mentality of judges, prosecutors, lawyers and administrative staff in courts. She heard from various stakeholders about practical measures and programmes to train all those involved in the administration of justice, and further encourages such initiatives.

87. A number of interlocutors expressed their concern about the fact that legal professional education for judges and prosecutors at the Higher Institute for Magistrates was basic, and should cover in greater depth ethical issues of independence and impartiality, and practical issues of working methods and case management. Initial and on-the-job training on ethical conduct and efficiency in the organization of work in the administration of justice should be made compulsory for all judges, including for their promotion.

88. The Special Rapporteur was pleased to learn that there is mandatory on-the-job professional training for sitting judges and prosecutors with fewer than six years of experience, but regrets that training is not compulsory thereafter. Reportedly, there is no compulsory training to become eligible for promotion. The Special Rapporteur is concerned about complaints that insufficient means are allocated to training, and that information about training opportunities, those selected to attend and the criteria used is lacking or not transparent. More needs to be done to set aside funds, and to create and propose training courses in a long-term sustainable manner, to the benefit of all judicial actors. This would further strengthen the integrity of the justice system and its independence.

IV. Conclusions

89. **Tunisia finds itself at the critical stage of having to transition from a largely fragmented justice system, which was revised to create interim structures and laws owing to the political necessities and realities, to a system designed in a holistic way and set out in the Constitution as one of the three powers of the State.**

90. **Although the general public has a poor perception of the justice system and trust in it is low, justice not only needs to be done but must also be seen to be done. The abuses of the previous regime, where corruption and regular executive interference in the work of the judiciary to influence the outcome of specific cases before the courts were common, must cease. The issue of the independence of the judiciary is also related to institutional culture and mentality, which must eventually give way to a culture based on human rights and an understanding of the principle of the independence of the judiciary and the separation of powers.**

91. **The Constitution generated high expectations and has left much work to legislators, to revise existing laws and to draft new ones to operationalize the vision of**

an independent judiciary and of a functioning, independent and impartial justice system.

92. Some progress has already been made, but much remains to be done. Against this backdrop, the Special Rapporteur would like to highlight the importance of the role to be played by the newly-elected authorities in building an independent justice system in Tunisia. She encourages them to continue the broad and open-ended consultations to adopt the legislation necessary for the establishment and functioning of the Supreme Judicial Council and the Constitutional Court in accordance with the Constitution of 2014 as a matter of urgency. Such legislation should comply with the international human rights obligations of Tunisia to strengthen the rule of law, to build trust in democratic institutions, and to develop a judicial system that will guarantee people's human rights.

V. Recommendations

A. Legal framework

93. The Parliament should draft, on the basis of broad and inclusive consultations, including with civil society organizations, and adopt the necessary legislation, in particular that required to operationalize the Supreme Judicial Council and the Constitutional Court, and to elect their members as a matter of urgency.

B. Independence, impartiality, integrity and accountability

94. The close ties that exist between the judiciary and the executive should be severed so that that the judiciary may become independent in practice.

95. The principle of independence should be affirmed expressly in the law governing the mandate, structure, organization and procedures applicable to each of the four entities composing the Supreme Judicial Council.

C. Selection, appointment and conditions of tenure of judges

96. The law governing the composition of the Supreme Judicial Council should specify the exact number of members of the Council, and that at least a majority should be judges elected by their peers. It should also specify that due consideration should be given to gender balance among Council members, and establish clear and objective procedures and criteria for both elected and appointed members, and the term of their mandates.

97. The composition, mandate, structure, organization and procedures applicable for each of the four entities composing the Supreme Judicial Council should be established in the law, which should also guarantee its administrative and financial independence.

98. The law governing the statute of judges should specify clearly that the selection, appointment and promotion of judges should be based on fair, transparent and objective criteria and procedures. Such procedures and criteria should be based on merit, competence, ability, appropriate training and qualifications in law, integrity and propriety, in accordance with the Basic Principles on the Independence of the Judiciary and the Bangalore Principles of Judicial Conduct.

99. **The law governing the statute of judges should provide that judges may only be removed or suspended for reasons of incapacity or behaviour that renders then unfit to discharge their duties, and guarantee security of tenure for judges until a mandatory retirement age or the expiry of their term of office.**

100. **The Supreme Judicial Council should strengthen the vetting of future judges, including a full investigation into the conduct of candidates, prior to their appointment, to ensure their integrity and to fight corruption.**

101. **The assessment of judges' work, and the decisions on the promotion and transfer of judges should be based on the same objective criteria that govern their selection and appointment, and should include procedural guarantees of fairness, such as the right to be consulted and to express one's views on the assessment, and to challenge the assessment, if deemed necessary.**

102. **The law dealing with the statute of judges should stipulate clearly that the initiation and conduct of disciplinary investigation (including general guidelines in terms of sources of information and how to gather it), disciplinary proceedings and the implementation of disciplinary sanctions are to be conducted by the Supreme Judicial Council. It should stipulate expressly that all stages of disciplinary proceedings should include guarantees of a fair trial and be subject to an independent review by a competent, independent and impartial tribunal.**

103. **A code of conduct for judges, sufficiently detailed, comprehensive and in accordance with the Bangalore Principles of Judicial Conduct, should be elaborated by judges themselves.**

D. Budget and conditions of work

104. **The Supreme Judicial Council and the courts should enjoy real administrative and financial independence through its own separate budget allocation and management. The three judicial councils, in coordination with the Supreme Judicial Council, should be vested with the role of receiving proposals from the courts, preparing a consolidated draft for the judicial budget and presenting it to the appropriate parliamentary committee, with the right to participate in subsequent deliberations.**

E. Case management, internal regulations and procedures, judicial delays and access to justice

105. **The solutions offered by information and communications technology should be explored through technical assistance and capacity-building to increase the efficiency of case management and working processes, and to reduce undue delays in all courts. All actors in the judicial system should be trained, in particular on information and communications technology.**

106. **The Code of Criminal Procedure should be reformed to reduce the lawful duration of police custody to a maximum of 48 hours and to ensure that access to a lawyer during police custody is expressly provided for in the law; and to make the legal grounds and records of arrest available to the families and to defence counsel. All allegations of torture should be investigated ex officio by the investigative judge.**

F. Threats, attacks and lack of protection

107. **Any act of harassment, threat, attack or physical assault against judges, prosecutors or lawyers should be investigated promptly and carefully and the perpetrators sanctioned. Appropriate protection measures, should when necessary, be provided to judges, prosecutors, lawyers and their families.**

G. Prosecutorial services

108. **The public prosecution service should be independent of the Minister for Justice and be headed by the Prosecutor-General of the Republic, who also should be independent of the Minister for Justice. The service should be financially autonomous.**

109. **The independence of prosecutors vis-à-vis the judiciary should be established in relevant organic laws and other relevant legislation to ensure the distinct role that each of them should have, in accordance with the Guidelines on the Role of Prosecutors.**

110. **The law governing the selection, appointment and promotion of prosecutors should include fair, impartial and objective criteria and procedures. Such procedures and criteria should take into account professional qualifications, ability, integrity and experience, in accordance with the Guidelines on the Role of Prosecutors.**

111. **The above-mentioned law should ensure that case-specific instructions to prosecutors are eschewed; in extraordinary cases when such instructions are deemed necessary, such instructions should be given in writing, formally recorded and carefully circumscribed to avoid undue interference or pressure. The law should also afford prosecutors the right to challenge the instructions received, particularly when they are deemed unlawful or contrary to professional standards or ethics.**

112. **A code of conduct for prosecutors should be elaborated by prosecutors themselves, bearing in mind their distinct role and duties in the administration of justice and in accordance with the Guidelines on the Role of Prosecutors.**

H. Military courts

113. **Legislation on military courts should be revised to ensure that the military court system only has jurisdiction to try military personnel who have committed military offences or breaches of military discipline, when such offences do not amount to serious human rights violations, and to transfer from military to civilian courts the investigation and jurisdiction of cases involving gross human rights violations committed with the alleged involvement of military and security forces.**

I. Lawyers

114. **The remuneration of defence lawyers appointed to provide legal assistance in criminal cases should be increased in accordance with the indicative legal fees set by the bar association.**

115. **The authorities should, with immediate effect, cease to associate lawyers with the interests of their clients and refrain from expressing related comments in the public sphere, including the media.**

116. **Awareness-raising measures on the role of lawyers should be taken by all relevant actors.**

117. **All communications and consultations between lawyers and their clients within their professional relationship should be confidential in law and in practice.**

J. Education, training and capacity-building

118. **Initial and on-the-job training and continuing legal education should be provided on issues of institutional independence and the codes of conduct and ethics for judges and prosecutors.**

119. **Training opportunities should be sufficiently publicized in advance and adequately accessible to all judges, prosecutors and lawyers.**

120. **United Nations specialized agencies, funds and programmes and the donor community should provide financial assistance and technical support to national training institutions for developing quality education curricula and professional training designed for judges, prosecutors and lawyers.**